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# 1981–82 MISCELLANEOUS TAX BILLS, XV

COMPLETED
216

ORIGINAL

# HEARING

BEFORE THE

## SUBCOMMITTEE ON
## TAXATION AND DEBT MANAGEMENT

OF THE

## COMMITTEE ON FINANCE
## UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

## S. 1485, S. 2075, S. 2424, and S. 2425

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MAY 21, 1982

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# 1981-82 MISCELLANEOUS TAX BILLS XV

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**FRIDAY, MAY 21, 1982**

U.S. SENATE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,
COMMITTEE ON FINANCE,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9:28 a.m., in room 2221, Dirksen Senate Office Building, Hon. Bob Packwood (chairman of the subcommittee) presiding.

Present: Senators Packwood, Dole, Roth, Heinz, and Mitchell.

[The committee press release; the bills S. 1485, S. 2075, S. 2424, and S. 2425; the description of the bill by the Joint Committee on Taxation; and the prepared statement of Senator Roth follow:]

Press Release No. 82-129

PRESS RELEASE

FOR IMMEDIATE RELEASE
May 5, 1982

COMMITTEE ON FINANCE
UNITED STATES SENATE
Subcommittee on Taxation and
Debt Management
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
SETS HEARING ON MISCELLANEOUS TAX BILLS

The Honorable Bob Packwood, Chairman of the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance, announced today that the Subcommittee will hold a hearing on Friday, May 21, 1982, on four miscellaneous tax bills.

The hearing will begin at 9:00 a.m. in Room 2221 of the Dirksen Senate Office Building.

The following proposals will be considered:

S. 1485--Introduced by Senator Roth. S. 1485 would provide that certain amendments to the Revenue Act of 1978 permitting investment tax credits for single purpose agricultural or horticultural structures for taxable years ending after August 15, 1971, would apply to closed taxable years if application for credit or refund is made within one year of the bill's enactment.

S. 2075--Introduced by Senator Roth. S. 2075 would increase the yield on United States savings bonds to a level competitive with the yield on fifty-two week Treasury bills.

S. 2424--Introduced by Senator Heinz (for himself and for Senators Packwood, Pryor, Burdick and Melcher). S. 2424 would allow taxpayers a tax credit for a portion of home health care expenses incurred in caring for elderly family members.

S. 2425--Introduced by Senator Roth. S. 2425 would change certain tax rules applicable to tax-exempt mortgage subsidy bonds and make tax-exempt bonds available for certain residential rental property.

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97TH CONGRESS
1ST SESSION

# S. 1485

To amend the Revenue Act of 1978 to provide that, with respect to the amendments allowing the investment tax credit for single purpose agricultural or horticultural structures, credit or refund shall be allowed without regard to the statute of limitations for certain taxable years to which such amendments apply.

---

IN THE SENATE OF THE UNITED STATES

JULY 15 (legislative day, JULY 8), 1981

Mr. ROTH introduced the following bill; which was read twice and referred to the Committee on Finance

---

# A BILL

To amend the Revenue Act of 1978 to provide that, with respect to the amendments allowing the investment tax credit for single purpose agricultural or horticultural structures, credit or refund shall be allowed without regard to the statute of limitations for certain taxable years to which such amendments apply.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That subsection (c) of section 314 of the Revenue Act of 1978 (relating to investment credit for certain single purpose

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agricultural or horticultural structures) is amended to read as follows:

"(c) EFFECTIVE DATE.—

"(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall apply to taxable years ending after August 15, 1971.

"(2) REFUND OR CREDIT.—If refund or credit of any overpayment of tax resulting from the amendments made by subsections (a) and (b) is prevented on the date of the enactment of this paragraph or at any time within one year after such date by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed within one year after such date of enactment.".

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97TH CONGRESS
2D SESSION

# S. 2075

To amend the Second Liberty Bond Act to increase the investment yield on United States savings bonds to a level competitive with fifty-two-week Treasury bills.

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 25), 1982

Mr. ROTH introduced the following bill; which was read twice and referred to the Committee on Finance

---

# A BILL

To amend the Second Liberty Bond Act to increase the investment yield on United States savings bonds to a level competitive with fifty-two-week Treasury bills.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That paragraph (3) of section 22(b) of the Second Liberty Bond Act (31 U.S.C. 757(3)) is amended to read as follows:

"(3) Notwithstanding paragraph (1), the Secretary of the Treasury shall fix the investment yield on any United States savings bond at a yield which makes such bond competitive with comparable investments: *Provided, however,* That in no event shall the investment yield on such bonds

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exceed 85 per centum of the average investment yield for the most recent auction (before the week in which the certificate is issued) of United States Treasury bills with maturities of fifty-two weeks.".

SEC. 2. The amendment made by section 1 hereof shall apply with respect to interest accrual periods beginning after the date of enactment of this Act.

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97TH CONGRESS
2D SESSION

# S. 2424

To amend the Internal Revenue Code of 1954 to allow a credit against tax for expenses incurred in the care of elderly family members.

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IN THE SENATE OF THE UNITED STATES

APRIL 22 (legislative day, APRIL 13), 1982

Mr. HEINZ (for himself, Mr. PACKWOOD, Mr. PRYOR, Mr. BURDICK, and Mr. MELCHER) introduced the following bill; which was read twice and referred to the Committee on Finance

---

# A BILL

To amend the Internal Revenue Code of 1954 to allow a credit against tax for expenses incurred in the care of elderly family members.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable against tax) is amended by inserting before section 45 the following new section:

"SEC. 44H. EXPENSES FOR CARE OF ELDERLY FAMILY MEMBER.

"(a) ALLOWANCE OF CREDIT.—

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"(1) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of qualified elderly care expenses paid by such individual for the care of a qualifying family member during the taxable year.

"(2) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (1), the term 'applicable percentage' means 30 percent reduced (but not below 20 percent) by 1 percentage point for each $2,000 (or fraction thereof) by which the adjusted gross income of the taxpayer (and the spouse of the taxpayer in the case of a married individual filing a separate return) for the taxable year exceeds $10,000.

"(b) LIMITATIONS.—For purposes of this section—

"(1) LIMIT ON INCOME OF TAXPAYER.—No credit shall be allowable under subsection (a) for a taxpayer with an adjusted gross income of $50,000 or more for the taxable year ($25,000 or more in the case of a married individual filing a separate return).

"(2) DOLLAR LIMITATIONS ON AMOUNT OF CREDIT.—

"(A) MAXIMUM QUALIFIED ELDERLY CARE EXPENSES TAKEN INTO ACCOUNT.—The amount of qualified elderly care expenses taken into ac-

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count under subsection (a) by any taxpayer for any taxable year shall not exceed $7,000, except that not more than $3,500 may be taken into account with respect to any qualifying family member.

"(B) SPECIAL RULES FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—In the case of a married individual filing a separate return, paragraph (1) shall be applied by substituting '$3,500' for '$7,000' and '$1,750' for '$3,500'.

"(C) 2 OR MORE INDIVIDUALS MAKING EXPENDITURES WITH RESPECT TO SAME QUALIFYING FAMILY MEMBER.—If 2 or more individuals have qualified elderly care expenses with respect to any qualifying family member during any calendar year, then—

"(i) the amount of the qualified elderly care expenses taken into account with respect to such qualifying family member shall be determined by treating all of such individuals as one taxpayer whose taxable year is such calendar year, and

"(ii) the amount of such expenditures taken into account by each of such individ-

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uals for the taxable year in which such calendar year ends shall be equal to the amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFYING FAMILY MEMBER.—The term 'qualifying family member' means any individual (other than the spouse of the taxpayer) who—

"(A) is related to the taxpayer by blood or marriage,

"(B) is at least 75 years of age (or is diagnosed by a physician as having senile dementia of the Alzheimer type), and

"(C) has a family income of $15,000 or less for the taxable year.

"(2) FAMILY INCOME.—The term 'family income' means—

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"(A) in the case of an individual who is not married, the adjusted gross income of such individual; and

"(B) in the case of a married individual, the adjusted gross income of such individual and his spouse.

"(3) QUALIFIED ELDERLY CARE EXPENSES.—The term 'qualified elderly care expenses' means payments by the taxpayer for home health agency services (but only if provided by an organization certified by the Health Care Financing Administration), homemaker services, adult day care, respite care, or health-care equipment and supplies which—

"(A) are provided to such qualifying family member,

"(B) are provided by an organization or individual not related to the taxpayer or to the qualifying family member, and

"(C) are not compensated for by insurance or otherwise.

"(4) APPLICATION WITH OTHER CREDITS.—Notwithstanding any provision of this part, the amount of the credit allowable under subsection (a) shall be allowed as a credit against the tax imposed by this chapter before any other credit allowed by this subpart.

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"(d) DENIAL OF DOUBLE BENEFIT.—No deduction or credit shall be allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under subsection (a).".

(b) CREDIT MADE REFUNDABLE.—

(1) Subsection (b) of section 6401 of such Code (relating to excessive credit is treated as overpayments) is amended—

(A) by striking out "and 43 (relating to earned income credit)," and inserting in lieu thereof "43 (relating to earned income credit), and 44H (relating to elderly care credit),", and

(B) by striking out "39 and 43" and inserting in lieu thereof "39, 43, and 44H".

(2) Paragraph (2) of section 55(b) of such Code (defining regular tax) is amended by striking out "39 and 43" and inserting in lieu thereof "39, 43, and 44H".

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting before the item relating to section 45 the following new item:

"Sec. 44H. Expenses for care of elderly family member.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1982.

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(e) REPORTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall prepare a report for taxable years ending in 1983 (and each of the 4 calendar years thereafter) which estimates—

(A) the number of individuals who were allowed a credit under section 44H of the Internal Revenue Code of 1954 for taxable years ending during such calendar year,

(B) the utilization of such credit by income group for such calendar year,

(C) the utilization of such credit by category of qualified elderly care expenses (as defined in paragraph (3) of subsection (c) of section 44H of such Code) during such calendar year, and

(D) the total effect on the revenues of the United States of allowing such credit during such calendar year.

(2) TIME FOR FILING.—Any report required under paragraph (1) shall be submitted to the Congress no later than September 15 of the calendar year following the calendar year for which it is required.



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97TH CONGRESS
2D SESSION

# S. 2425

To amend the Internal Revenue Code of 1954 to clarify certain requirements which apply to mortgage subsidy bonds, to make tax-exempt bonds available for certain residential rental property, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

APRIL 22 (legislative day, APRIL 13), 1982

Mr. ROTH introduced the following bill; which was read twice and referred to the Committee on Finance

---

# A BILL

To amend the Internal Revenue Code of 1954 to clarify certain requirements which apply to mortgage subsidy bonds, to make tax-exempt bonds available for certain residential rental property, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. REQUIREMENTS FOR AND EXTENSION OF MORTGAGE SUBSIDY BONDS.

(a) INCREASE IN AMOUNT OF MORTGAGE INTEREST LIMITATION.—

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(1) IN GENERAL.—Paragraph (2) of section 103A(i) of the Internal Revenue Code of 1954 (relating to effective rate of mortgage interest) is amended by striking out "1 percentage point" and inserting in lieu thereof "1¼ percentage points".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 103A(i)(4) of such Code (relating to arbitrage and investment gains) is amended—

(i) by striking out "1 percentage point" in clause (ii) and inserting in lieu thereof "1¼ percentage points", and

(ii) by striking out the caption and inserting in lieu thereof the following:

"(C) REDUCTION BY UNUSED PARAGRAPH (2) AMOUNT.—".

(B) Paragraph (2) of section 103A(i) of such Code is amended by striking out the caption and inserting in lieu thereof the following:

"(2) LIMITATION ON EFFECTIVE RATE OF MORTGAGE INTEREST.—".

(b) INCREASE IN PURCHASE PRICE REQUIREMENTS.—

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(1) IN GENERAL.—Paragraph (1) of section 103A(f) of such Code (relating to purchase price requirements) is amended by striking out "90 percent" and inserting in lieu thereof "110 percent".

(2) TARGETED AREAS.—Paragraph (5) of section 103A(f) of such Code (relating to a special rule for targeted area residences) is amended—

(A) by striking out "110 percent" and inserting in lieu thereof "120 percent"; and

(B) by striking out "90 percent" and inserting in lieu thereof "110 percent".

(c) OWNERSHIP INTEREST.—Paragraph (1) of section 103A(e) of such Code (relating to prior residency requirements for mortgagors) is amended to read as follows:

"(1) IN GENERAL.—An issue meets the requirements of this subsection only if at least 80 percent of the mortgagors to whom financing is provided under the issue certify that such mortgagor—

"(A) had an ownership interest in a prior residence which an appropriate State or local official has certified as not meeting the minimum standards established for the areas by the State or local government with respect to sanitation, heating, major structural requirements, or overcrowding,

"(B) had an ownership interest in a prior residence which can no longer continue to be occupied on a permanent basis due to natural disaster or governmental action, or

"(C) did not have a present ownership interest in a principal residence of such mortgagor at any time during the 3-year period ending on the date the mortgage is executed.

For purposes of the subparagraph (C), the mortgagor's interest in the residence with respect to which the financing is being provided shall not be taken into account.".

(d) DISPOSITION OF NONMORTGAGE INVESTMENT IN CASE OF LOSS.—Paragraph (3) of section 103A(i) of such Code (relating to nonmortgage investment requirements) is amended by adding at the end thereof the following new subparagraph:

"(D) NO DISPOSITION IN CASE OF LOSS.—This paragraph shall not require the sale or disposition of any investment if such sale or disposition would result in a loss which exceeds the amount which would be paid or credited to the mortgagors under paragraph (4)(A) (but for such sale or disposition) at the time of such sale or disposition.".

(e) ELIMINATION OF REGISTRATION REQUIREMENTS.—

(1) IN GENERAL.—Subsection (j) of section 103A of such Code (relating to other requirements) is amended by striking out paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(2) CONFORMING AMENDMENTS.—Subsection (c) of section 103A of such Code (relating to qualified mortgage issue) is amended—

(A) by striking out "and (f) and paragraphs (2) and (3) of subsection" in paragraph (2)(B) and inserting in lieu thereof "(f), and",

(B) by striking out ", and paragraph (1) of subsection (j)" in paragraph (2)(C), and

(C) by striking out "subsection (j)(2)" in paragraph (3)(C) and inserting in lieu thereof "subsection (j)(1)".

(f) EXTENSION OF SECTION 103A.—Subparagraph (B) of section 103A(c)(1) (relating to termination) is amended by striking out "1983" in the heading and text thereof and inserting in lieu thereof "1985".

SEC. 2. INDUSTRIAL DEVELOPMENT BONDS FOR CERTAIN RESIDENTIAL RENTAL PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 103(b)(4) of the Internal Revenue Code of 1954 (relating to certain exempt activities) is amended to read as follows:

"(A) projects for residential rental property if at all times during the qualified project period—

"(i) 15 percent or more in the case of targeted area projects, or

"(ii) 20 percent or more in the case of any other project,

of the units in each project are to be occupied by individuals of low or moderate income,".

(b) DEFINITIONS.—Subsection (b) of section 103 of such Code (relating to industrial development bonds) is amended by redesignating paragraph (10) as paragraph (11) and inserting after paragraph (9) the following new paragraph:

"(10) PROJECTS FOR RESIDENTIAL RENTAL PROPERTY.—For purposes of paragraph (4)(A)—

"(A) TARGETED AREA PROJECT.—The term 'targeted area project' means—

"(i) a project located in a qualified census tract (within the meaning of section 103A(k)(2), or

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"(ii) an area of chronic economic distress (within the meaning of section 103A(k)(3)).

"(B) QUALIFIED PROJECT PERIOD.—The term 'qualified project period' means the period beginning on the first day on which a unit of the project is occupied and ending on the later of—

"(i) the date which is 10 years after the date on which such period begins,

"(ii) the date which is a qualified number of days after the date on which such period begins, or

"(iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

For purposes of clause (ii), the term 'qualified number' means, with respect to an obligation described in paragraph (4)(A), 50 percent of the number of days which comprise the term of such obligation.

"(C) INDIVIDUAL OF LOW OR MODERATE INCOME.—

"(i) IN GENERAL.—The term 'individual of low or moderate income' means an individual who—

"(I) has a gross income for the taxable year in which such individual begins residing in a unit of the project which does not exceed 80 percent of the median gross income for the calendar year ending with, or within, such taxable year of all individuals residing within the area in which such unit is located, or

"(II) is classified as an individual of low or moderate income under regulations prescribed by the Secretary of Housing and Urban Development.

"(ii) MEDIAN GROSS INCOME.—For purposes of clause (i)(I), the median gross income of all individuals residing within a certain area shall be determined on the basis of estimates which the Secretary of Housing and Urban Development shall make for each calendar year and shall publish in the Federal Register.

"(iii) REGULATIONS.—In prescribing regulations under clause (i)(II), the Secretary of Housing and Urban Development may take into consideration the size of the individual's household and may prescribe a gross income limitation which differs from the limitation in clause (i)(I) if the Secretary finds such variance is justified due to construction costs, unusually high or low gross income levels, or other factors prevailing in the area.".

(c) CONFORMING AMENDMENT.—Paragraph (4) of section 103(b) of such Code is amended by striking out the second sentence thereof.

**SEC. 3. EFFECTIVE DATE.**

The amendments made by this Act shall apply to obligations issued after the date of enactment of this Act.

# DESCRIPTION OF TAX BILLS

## (S. 1485, S. 2075, S. 2424, and S. 2425)

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

## INTRODUCTION

The bills described in this pamphlet have been scheduled for a public hearing on May 21, 1982, by the Senate Finance Subcommittee on Taxation and Debt Management.

There are four bills scheduled for the hearing: S. 1485 (investment tax credit for single purpose agricultural or horticultural structures for closed taxable years); S. 2075 (increased interest rate on U.S. savings bonds); S. 2424 (tax credit for home health care expenditures for elderly family members); and S. 2425 (modification of mortgage subsidy bond rules and IDBs for certain residential rental property).

The first part of the pamphlet is a summary of the bills. This is followed by a more detailed description of the bills, including present law, issues, explanation of provisions, and effective dates.

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# I. SUMMARY

## 1. S. 1485—Senators Roth and Helms

### Investment Tax Credit for Single Purpose Agricultural or Horticultural Structures for Closed Taxable Years

The Revenue Act of 1978 amended Code section 48 to provide expressly that "single purpose agricultural or horticultural structures" are eligible for the investment tax credit. The 1978 provision was made effective for taxable years ending after August 15, 1971 (the effective date for restoration of the credit by the Revenue Act of 1971).

The bill would provide that taxpayers may file amended returns claiming the investment tax credit for single purpose agricultural or horticultural structures, based on the provision enacted in 1978 (retroactive to 1971). If filed within one year after enactment of the bill, the claim for the credit would be allowed even though the statute of limitations, the rule of res judicata, or other law or rule of law would otherwise operate to prevent allowance of the claim.

## 2. S. 2075—Senator Roth

### Increased Interest Rate on U.S. Savings Bonds

Present law provides that the Secretary of the Treasury, with the consent of the President, may increase the maximum interest rate on U.S. savings bonds by not more than one percentage point in any six-month period. Pursuant to the most recent exercise of this authority (May 1, 1981), the yield on Series EE bonds is now nine percent, and the yield on Series HH bonds is 8½ percent.

Under the bill, the Secretary of the Treasury would be authorized to set the investment yield on U.S. savings bonds at a yield making such bonds competitive with comparable investments, but not in excess of 85 percent of the average yield on 52-week U.S. Treasury bills (for the most recent auction). The amendment made by the bill would apply with respect to interest accrual periods beginning after the date of enactment.

## 3. S. 2424—Senators Heinz Packwood, and Durenberger, and others

### Tax Credit for Home Health Care Expenditures for Elderly Family Members

Under present law, there is no special income tax credit or deduction for expenses incurred in providing home health care for elderly family members. However, if an elderly relative qualifies as a dependent, the taxpayer may be eligible to claim a $1,000 personal exemption



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for the dependent, to deduct medical expenses paid on behalf of the relative, and to claim a tax credit for certain employment-related household and dependent care expenditures if the relative is incapacitated.

The bill would provide a refundable tax credit for a portion of certain elderly care expenses paid by an individual on behalf of qualifying family members. Expenditures eligible for the credit would be amounts paid for certain home health aide services, homemaker services, adult day care, respite care, and certain unreimbursed medical or health-related equipment and supplies. Qualifying family members would include relatives who are age 75 or older (or suffering from certain types of premature senility) and who have less than $15,000 of family income.

The maximum amount of elderly care expenses eligible for the credit would be $3,500 for one qualifying family member or $7,000 for two or more qualifying family members ($1,750 and $3,500, respectively, where the taxpayer making the expenditures is a married individual filing a separate return).

The rate of the credit would be 30 percent where the taxpayer making the qualified elderly care expenditures has adjusted gross income of $10,000 or less. The rate would be reduced by one percentage point for each $2,000 of income (or fraction thereof) above $10,000, until the lowest rate (20 percent) is reached for taxpayers with income above $28,000. No credit would be allowed to taxpayers with adjusted gross income of $50,000 or more ($25,000 in the case of a married individual filing a separate return).

### 4. S. 2425—Senators Roth and Tsongas

### Modification of Mortgage Subsidy Bond Rules; IDBs For Certain Residential Rental Property

*Overview*

The Mortgage Subsidy Bond Tax Act of 1980 provided rules for bonds used to finance single-family, owner-occupied residences ("qualified mortgage bonds") and for bonds used to finance residential rental projects ("multi-family industrial development bonds"). The bill would amend certain of the rules which apply to each of these types of bonds.

*Qualified mortgage bonds*

The bill would modify the so-called first-time home buyer or three-year rule, by providing that the rule is satisfied if at least 80 percent (rather than 100 percent, as required under present law) of the mortgagors receiving financing under the mortgage subsidy bond issue certify that they have not owned a residence within the preceding three years. In addition, the bill would provide exceptions to the three-year rule in the case of individuals who lived in residences that were either (1) made uninhabitable by natural disaster or governmental action or (2) certified by an appropriate State or local official as not meeting certain minimum housing standards.

The bill would increase the purchase price limitations from 90 percent (110 percent in targeted areas) to 110 percent (120 percent in

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targeted areas) of the average purchaase price. Thus, under the bill, all of the mortgages provided from the bond proceeds must be for the purchase of residences where the acquisition cost of each residence does not exceed 110 percent (120 percent in targeted areas) of the average area purchase price applicable to each residence.

The bill would increase the allowable arbitrage on mortgage investments from one percentage point to one and one quarter percentage points. In addition, the bill would provide an exception to the restrictions on arbitrage on nonmortgage investments so that no investment would have to be sold at a loss.

The bill would eliminate the registration requirement under present law for mortgage subsidy bonds.

The bill would extend the termination date an additional two years to December 31, 1985.

*Multi-family rental industrial development bonds (IDBs)*

Under present law, a certain percentage of units in each IDB-financed project must be occupied by individuals of low or moderate income. The bill would provide that this targeted group of tenants be either (1) those individuals whose gross income does not exceed 80 percent of the area median gross income or (2) those individuals who are classified as individuals of low or moderate income by the Secretary of Housing and Urban Development. Under present law, the targeted group conforms to those individuals who are eligible to receive section 8 rental housing assistance.

Under present law, the targeted requirement must be met for at least 20 years in order for IDBs for multi-family rental projects to be tax-exempt. The bill would provide that the targeting requirement need be met only until the later of (1) ten years from the date of first occupancy, (2) a date ending when 50 percent of the maturity of the bond has elapsed, or (3) the date on which any section 8 assistance for the project terminates.

The bill would repeal the registration requirement as it applies to IDBs for multi-family rental housing.

*Effective date*

The provisions of the bill would apply with respect to obligations issued after the date of enactment.

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## II. DESCRIPTION OF BILLS

### 1. S. 1485—Senators Roth and Helms

### Investment Tax Credit for Single Purpose Agricultural or Horticultural Structures for Closed Taxable Years

***Background***

When the investment tax credit was restored by the Revenue Act of 1971, property made eligible for the credit included tangible personal property and other tangible property (not including a building or its structural components) used as an integral part of manufacturing, production, or extraction, or in furnishing certain utility services.

In its report on the 1971 Act, the Senate Finance Committee expressed its intent that the restored credit was to apply to "special purpose" structures (S. Rep. No. 92–437, 92d Cong., 1st Sess. (1971)). A special purpose structure was defined in the report as a structure that houses property used as an integral part of a manufacturing or production activity (such as farming), if the use of the structure is so closely related to the use of the equipment housed that the structure would be replaced when the equipment housed is replaced. The Internal Revenue Service, however, subsequently denied the credit for certain structures and enclosures used for raising poultry, livestock, or horticultural products, or for producing eggs, on the ground that such structures and enclosures are buildings for which no credit was allowed.

In the Revenue Act of 1978, a new Code section was enacted to make "single purpose agricultural or horticultural structures" expressly eligible for the investment credit (sec. 48(a)(1)(D)). This provision was effective for taxable years ending after August 15, 1971, i.e., all taxable years for which the restored credit was available. No provision was specifically made to allow taxpayers to claim a refund for a taxable year closed by the statute of limitations, the final judgment of a court, or other law or rule of law. In the absence of a specific provision for reopening closed years, retroactive effective dates are usually interpreted to bar such claims for refund, in the interest of providing finality for purposes of efficient administration of the tax laws.

***Issue***

The issue is whether claims for refund (or credit of overpayment of tax) based on the enactment of Code section 48(a)(1)(D) should be allowed, if filed within one year following enactment of the bill, where such claims otherwise would be precluded by operation of the statute of limitations, the rule of res judicata, or any other law or rule of law.



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***Explanation of the bill***

Under the bill, claims for refund (or credit of overpayment of tax) based on the enactment of Code section 48(a)(1)(D) would be allowed, if filed within one year after the date of enactment of the bill, even though allowance of the claims otherwise would be precluded by operation of the statute of limitations, the rule of res judicata, or any other law or rule of law.

***Effective date***

The provisions of the bill would be effective on enactment.

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## 2. S. 2075—Senator Roth

## Increased Interest Rate on U.S. Savings Bonds

### *Present law*

Under present law, the Secretary of the Treasury has discretionary authority, within certain statutory limits, to set the rate of interest on U.S. savings bonds and savings certificates.

The minimum investment yield on Series EE savings bonds may not be less than four percent (annual rate, compounded semiannually from the date of issuance). The statute initially sets the maximum interest rate at 5½ percent. However, with the consent of the President, the Secretary of the Treasury may increase the investment yield above the initial 5½ percent statutory limit, by no more than one percentage point in any six-month period (annual rate, compounded semiannually).

Pursuant to the most recent exercise of this authority (May 1, 1981), the yield on Series EE savings bonds is now nine percent, compounded semiannually. These bonds have a maturity date which is eight years from the date of issuance. Also, on May 1, 1981, the yield on Series HH bonds was increased to 8½ percent. These bonds mature in 10 years, and interest is paid semiannually on these bonds by check.

No person may purchase more than $15,000 in Series EE bonds, at issue price, in any one year. The limit on purchases of Series HH bonds is $20,000. Series EE and HH bonds are not marketable securities.

(The Administration has proposed that, in place of the present statutory limitations on savings bond interest, the Secretary of the Treasury should be authorized to set interest rates on savings bonds which would be related to current market interest rates. Under this proposal, a market-rate savings bond could be issued, under which holders would be guaranteed minimum interest rates that would rise gradually during the first five years after purchase. Savings bonds held after five years would receive the higher of the market-related interest rate or the guaranteed rate.)

In general, an individual who owns a Series EE savings bond does not include in income increases in the bond's redemption value until it is actually redeemed. However, pursuant to Code section 454, the individual may elect to include in income each year the increase for that year in the bond's redemption value.

### *Issue*

The issue is whether the Secretary of the Treasury should have authority to set the investment yield on U.S. savings bonds at up to 85 percent of the average investment yield on the most recent 52-week U.S. Treasury bills.



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***Explanation of the bill***

Under the bill, the Secretary of the Treasury would have authority to set the yield on any U.S. savings bond at a yield which makes such bond competitive with comparable investments, but the savings bond yield could not exceed 85 percent of the average yield on 52-week U.S. Treasury bills (for the most recent auction before the week in which the certificate is issued).

***Effective date***

The amendment made by the bill would apply with respect to interest accrual periods beginning after the date of enactment.

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## 3. S. 2424—Senators Heinz, Packwood, and Durenberger, and others

### Tax Credit for Home Health Care Expenditures for Elderly Family Members

***Present law***

Under present law, there is no special income tax credit or deduction for expenses incurred in providing home health care for elderly family members. However, if an elderly relative qualifies as a dependent, the taxpayer may be eligible to claim a $1,000 personal exemption for the dependent, to deduct medical expenses paid on behalf of the relative, and to claim a tax credit for certain employment-related household and dependent care expenditures if the relative is incapacitated.

An individual qualifies as a dependent if the taxpayer provides more than one-half of the individual's support, and if the individual is related to the taxpayer or a member of the taxpayer's household (Code sec. 152). Parents, grandparents, stepparents, parents-in-law, and aunts and uncles are among the relatives of a taxpayer who may qualify as dependents whether or not members of the taxpayer's household.

A taxpayer is entitled to a $1,000 personal exemption for a dependent (such as an elderly relative supported by the taxpayer) if the dependent's gross income for the year is less than $1,000 (sec. 151(e)). Also, an individual who itemizes may claim a medical expense deduction for certain unreimbursed medical expenses paid on behalf of such dependent, subject to the limitations generally applicable to that deduction (sec. 213).

If a dependent who is a member of the taxpayer's household is physically or mentally incapacitated, present law provides a tax credit for certain employment-related expenses, up to $2,400, incurred by the taxpayer for care of the dependent. The maximum credit for any one dependent in a year is limited by reference to the amount of the taxpayer's gross income, and ranges from $480 to $720. Expenses eligible for the credit include amounts paid for certain in-home and outside services.

***Issue***

The principal issue is whether an income tax credit should be provided for certain home health care expenses incurred on behalf of elderly family members.

***Explanation of the bill***

*Overview*

The bill would permit an individual to claim a refundable tax credit for a portion of certain elderly care expenses paid during the year for care of qualifying family members. The maximum credit allowed in



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one year would be $1,050 for expenses paid as to one family member ($2,100 for expenses paid as to two or more family members) by a taxpayer whose adjusted gross income for the year does not exceed $10,000. (The maximum credit amounts would be $525 and $1,050, respectively, if such taxpayer is a married individual filing a separate return.)

*Qualifying family members*

A qualifying family member would be defined by the bill as any individual (other than the taxpayer's spouse) who (1) is related to the taxpayer by blood or marriage, (2) is at least 75 years of age (or suffers from Alzheimer disease), and (3) has family income[1] of $15,000 or less.

*Qualified elderly care expenses*

Under the bill, expenses qualifying for the credit would be payments for home health agency services provided by organizations certified by the Health Care Financing Administration, homemaker services, adult day care, respite care, or certain unreimbursed expenses for health care equipment and supplies provided by an unrelated organization or individual.

However, the maximum amount of such expenses eligible in one year for the credit would be $3,500 with respect to one qualifying family member, and $7,000 with respect to two or more family members ($1,750 and $3,500, respectively, if the taxpayer is a married individual filing a separate return).

If more than one individual paid elderly care expenses on behalf of a particular family member during the year, the maximum amount of elderly care expenses eligible for the credit would be determined by treating all such contributing individuals as one taxpayer. Each contributing individual would be entitled to compute separately the allowable credit by taking into account that portion of the maximum creditable expenses equal to his or her portion of the total elderly care expenses paid.

*Computation of credit*

Under the bill, the credit would be computed as a percentage of qualified elderly care expenses. The maximum credit (applicable to individuals who have $10,000 or less of adjusted gross income) would be 30 percent of qualified elderly care expenses (i.e., a maximum credit of $1,050 for one qualifying family member, or $2,100 if expenses are paid on behalf of two or more family members).

The maximum 30-percent credit rate would be reduced by one percentage point for each $2,000 of the taxpayer's adjusted gross income (or fraction thereof) above $10,000, until the lowest rate (20 percent) is reached for taxpayers with income above $28,000. Thus, an individual with more than $28,000 of adjusted gross income would be entitled to a maximum credit of 20 percent of qualifying elderly care expenses (i.e., a credit of $700 for one qualifying family member, or $1,400 if expenses are paid on behalf of two or more family members).

[1] Under the bill, family income, with respect to any unmarried family member, would be that individual's adjusted gross income or, in the case of a married individual, the adjusted gross income of such individual and his or her spouse.

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No credit would be allowable for a taxpayer with adjusted gross income of $50,000 or more ($25,000 in the case of a married individual filing a separate return).

*Duplication of benefits*

Under the bill, an individual would not be permitted to claim a deduction or credit under any other Code section for any elderly care expenses taken into account in determining the amount of the tax credit allowed for elderly care expenses.

*Reports*

The bill would require the Treasury Department to prepare and submit to the Congress a report estimating (1) the number of individuals who are allowed the credit for elderly care expenses; (2) the utilization of the credit by income group and by category of qualified elderly care expenses; and (3) the total effect on revenues of enacting the credit.

A report would be required for taxable years ending in 1983 and each of the four calendar years thereafter. The report would be due by September 15 of the calendar year following the calendar year for which required.

***Effective date***

The provisions of the bill would apply to taxable years beginning after December 31, 1982.

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## 4. S. 2425—Senators Roth and Tsongas

## Modification of Mortgage Subsidy Bond Rules; IDBs For Certain Residential Rental Property

### *Present law*

#### *Overview*

The Mortgage Subsidy Bond Tax Act of 1980 was enacted as part of the Omnibus Reconciliation Act of 1980 (P.L. 96–499). The Act was intended generally to direct the subsidy from the use of tax-exempt bonds for housing to those individuals who have the greatest need for the subsidy, to increase the efficiency of the subsidy, and to restrict the overall revenue loss from the use of tax-exempt bonds for housing. The Act provides for bonds used to finance single-family, owner-occupied residences (referred to as "qualified mortgage bonds") and for bonds used to finance residential rental projects ("multi-family rental industrial development bonds").

#### *Qualified mortgage bonds*

##### *First-time homebuyer or three-year rule*

In order for an issue to be a qualified mortgage bond, all of the mortgages financed from the bond proceeds must be provided to mortgagors each of whom did not have a present ownership interest in a principal residence at any time during the three-year period ending on the date that the mortgage is executed.

The three-year requirement does not apply with respect to mortgagors in three situations. First, it does not apply to mortgagors of residences that are located in a targeted area. Second, it does not apply to mortgagors who receive qualified home improvement loans. Third, it does not apply to mortgagors who receive a qualified rehabilitation loan.

##### *Purchase price requirement*

In order for an issue to be a qualified mortgage bond, all of the mortgages (or other financing) provided from the bond proceeds, except qualified home improvement loans, must be for the purchase of residences where the acquisition cost of each residence does not exceed 90 percent (110 percent in targeted areas) of the average area purchase price applicable to that residence.

The average area purchase price means the average purchase price of all single-family residences in the statistical area in which the residence is located. The average is to be based on sales during the most recent 12-month period for which sufficient statistical information is available.[1] Whether a particular residence meets the purchase price

[1] Temporary Treasury regulations provide a safe harbor rule under which an issuer may rely on the average purchase price published by the Treasury for an area for the period stated at the time of the publication (Temp. Reg. § 6a.103A–2 (f) (5)).



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requirement is determined on the date that the mortgage originator makes a commitment to provide financing from the bond proceeds (or, if earlier, the date of the purchase of the residence). Separate determinations are to be made for new and used residences.

*Arbitrage*

In order for an issue to be a qualified mortgage bond, the proceeds of an issue which are invested in mortgage and nonmortgage investments are subject to certain arbitrage requirements.

Under present law, the effective rate of interest on mortgages financed with the proceeds of an issue of qualified mortgage bonds may not exceed the yield on the issue by more than one percentage point. In general, this requirement imposes a limitation on the amount of costs a mortgagor is required to pay, such as underwriter commissions and other issuance costs, servicing fees, and trustee fees. Under this provision, the total cost of issuing the bonds and providing mortgage financing which may be passed on the mortgagors may not exceed the yield on the issue by more than one percentage point.

Certain restrictions are imposed on the investment of proceeds in nonmortgage investments. Present law limits the amount of proceeds invested at an unrestricted yield in nonmortgage investments to 150 percent of the debt service on the issue for the bond year. An exception to the 150-percent debt service rule is provided, however, for proceeds invested for a temporary period until such proceeds are needed for mortgages. In addition, present law also requires that arbitrage earned by the issuer on nonmortgage investments is to be paid or credited to the mortgagors or paid to the Federal Government.

*Registration*

In order for an obligation to be a qualified mortgage bond, all of the obigations which are part of the issue must be in registered form.

*Termination*

Present law provides that no obligation issued after 1983 may be treated as a qualified mortgage bond.

***Multi-family rental industrial development bonds (IDBs)***

*Targeted group*

Present law provides that interest on industrial development bonds (IDBs) is exempt from Federal income taxation if substantially all of the proceeds are used to provide a qualifying project for residential rental property. A project is treated as meeting these requirements only if 20 percent (15 percent in targeted areas) or more of the units in the project are to be occupied by individuals of low or moderate income.

For purposes of these requirements, the term low or moderate income has the same meaning as in Code section 167(k)(3)(B). Under that section, low or moderate income is to be determined by the Treasury Department in a manner consistent with the Leased Housing Program under section 8 of the United States Housing Act of 1937. The current Treasury regulations provide that occupants of a dwelling unit generally are considered families and individuals of low or moderate

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income only if their adjusted income does not exceed 80 percent of the median income for the area, as determined by the Secretary of Housing and Urban Development.

*Required period of targeting*

Present law provides that, for bonds issued before January 1, 1984 (and which do not come within the transitional rules), the 20 (or 15)-percent test must be met for a period of 20 years. The 20-year period begins on the first date that the project is available for occupancy and that the tax-exempt obligations are outstanding. Under this rule, the 20-percent test will be met where the developer of the project has entered into a contract with a Federal or State agency that requires that at least 20 (or 15) percent of the units be maintained for persons of low or moderate income for a period of at least 20 years and provides rent subsidies for such persons for that period.

*Registration*

Multi-family rental industrial development bonds must be in registered form.

***Issues***

***Qualified mortgage bonds***

The issues raised by the bill which relate to qualified mortgage bonds are:

(1) What should be the amount of arbitrage on mortgage investments?

(2) Should 20 percent of the mortgages provided by an issue not be subject to the three-year requirement? Should additional exceptions to the three-year rule be provided for individuals owning housing made uninhabitable by a disaster or governmental action or individuals living in substandard housing? Should the issuer have any responsibility to determine if these requirements are met or should the tests be met if the mortgagor certifies that the tests are met?

(3) Should an exception be provided to the restrictions on nonmortgage investments where the sale of a nonmortgage investment would result in a loss?

(4) Should the registration requirements be repealed?

(5) Should the termination date be extended to December 31, 1985?

***Multi-family rental industrial development bonds***

The issues raised by the bill which relate to multi-family rental industrial development bonds (IDBs) are:

(1) Should the income of tenants which will qualify for the 20 (or 15) percent test be permanently defined as 80 percent of the median gross income for an area or as an income determined by the Secretary of Housing and Urban Development from time to time, or should the targeted group automatically be limited to those individuals who would be eligible to receive direct rental assistance (under section 8 of the United States Housing Act of 1937)?

(2) How long should the project be used to provide rental housing to low or moderate income individuals in order for such project to qualify for tax-exempt industrial development bond financing?

(3) Should the registration requirements be repealed?

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### *Explanation of the bill*

#### *Qualified mortgage bonds*

*Three-year requirement*

The bill would provide that an obligation meets the three-year requirement if at least 80 percent of the mortgagors to whom financing is provided certify that they (1) had an interest in a residence which an appropriate State or local official has certified does not meet the minimum housing standards established for the area by the State or local government with respect to sanitation, heating, major structural requirements, or overcrowding, (2) had an ownership interest in a prior residence which can no longer be occupied on a permanent basis due to natural disaster or governmental action, or (3) did not have a present ownership interest in a principal residence at any time during the three-year period ending on the date the mortgage is executed.

*Purchase price requirement*

The bill would increase the purchase price limitations from 90 percent (110 percent in targeted areas) to 110 percent (120 percent in targeted areas) of the average area purchase price. Thus, under the bill, all of the mortgages (or other financing) provided from the bond proceeds, except qualified home improvement loans, would have to be for the purchase of residences where the acquisition cost of each residence does not exceed 110 percent (120 percent in targeted areas) of the average area purchase price applicable to that residence.

*Arbitrage*

Th bill would increase the maximum amount by which the effective rate of interest on mortgage investments may exceed the yield on the issue from 1.0 percentage points to 1.25 percentage points.

With respect to nonmortgage investments, the bill would provide that the rule of present law requiring liquidations of reserves will not apply to the extent it requires the disposition of any assset at a loss in excess of the amount of undistributed arbitrage profits on nonmortgage investments at such time.

*Registration*

The bill would eliminate the registration requirement for mortgage subsidy bonds.

*Termination*

The bill would extend the termination date an additional two years to provide that no obligation issued after 1985 may be treated as a qualified mortgage bond.

#### *Multi-family rental industrial development bonds (IDBs)*

*Targeted group*

The bill would modify the provisions of present law to provide that individuals with "low or moderate" income, for whom 20 (or, in targeted areas, 15) percent of the bond-financed units must be targeted, are (1) those individuals whose incomes do not exceed 80 percent of the area median gross income, or (2) those individuals who are classified as individuals of low or moderate income by the Secretary of Housing and Urban Development. The bill would provide that the

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gross income for an area may be determined by the use of estimates by the Secretary of Housing and Urban Development. Also, the bill would provide that the Secretary of Housing and Urban Development may take into consideration, in determining whether individuals are of low or moderate income, (1) the size of the individual's family, (2) construction costs in the area, and (3) any other factor prevailing in the area.

*Required period of targeting*

The bill would provide that the 20 (15 in targeted areas) percent requirement must be met for the period beginning on the first day on which a unit of the project is occupied and continuing until the later of (1) 10 years after that day, (2) a date ending when 50 percent of the maturity of the bond has elapsed, or (3) the date on which any section 8 assistance terminates.

*Registration*

The bill would repeal the registration requirement as it applies to multi-family rental industrial development bonds.

*Effective date*

The provisions of the bill would apply to obligations issued after the date of enactment.

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STATEMENT OF WILLIAM V. ROTH, JR.

I am pleased that the Subcommittee is receiving testimony this morning on three measures I have sponsored.

The Take Stock in America Act, S. 2075, will permit the Treasury Department to fix the interest paid to U.S. Savings Bond holders at a rate that is more competitive with other investment opportunities available to small investors.

An identical bill, H.R. 4853, was introduced in the House by Congressman Toby Roth who will be testifying before the Committee today. We like to call our legislation the Roth-Roth Act of 1982.

Under present law, the Treasury Department is prohibited from increasing the interest rate on savings bonds by more than one percent during any one six month period.

Until November of 1980 the interest rate on Series EE savings bonds was fixed at seven percent. On November 1, 1980, the Treasury Department increased the rate to eight percent and then to its current level of nine percent on May 1, 1981.

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The Treasury Department did not use its authority to increase the rate to 10 percent because it is seeking legislation to permit Treasury to vary the savings bond rate with market rates.

The bill Congressman Roth and I introduced is based on the Treasury proposal. There are, however, certain minor differences between our bill and the Treasury proposal. I look forward to working with Treasury and I am confident the differences between the two measures will be resolved.

It is my intention to sponsor the final product of our mutual efforts.

The Take Stock in America Act would make the interest rate on Series EE savings bonds equal to 85 percent of the yield on 52 week Treasury bills.

Over the years millions of Americans, including many of our servicemen and women, have invested in savings bonds.

Unfortunately, savings bonds have become a losing bargain because Congress has failed to act to insure a fair rate of return on the bonds.

Why should an investor purchase a savings bond at 7, 8 or even a 9 percent rate of return when he or she can invest in money market funds or small certificates of deposit with a 13, 14 or 15 percent rate of return? Unless the investor plans on losing money, he or she will definitely seek the highest return possible, and that eliminates savings bonds.

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Furthermore, money market funds require a minimum investment that is often too large for small investors to afford. This legislation would allow them a fair rate of return on investments as small as $25.

Right now, the savings bond program has become a losing proposition for the federal government. In 1979, savings bond redemptions exceeded sales by over $5 billion, over $11 billion in 1980, and $10 billion in 1981.

This cash drain from the savings bond program must be financed by other, more expensive Treasury borrowing, namely, the issuance of additional securities at interest rates much higher than the savings bond rate.

The Treasury Department could, under existing law, raise the savings bond rate to 10 percent, now, and possibly an even higher rate later, in an effort to stem this cash drain. But it would prove to be expensive to the Treasury in the long-run if money market interest rates declined.

By pegging the savings bond rate to 85 percent of the yield on 52 week Treasury bills, as Congressman Roth and I propose, we can insure a fair return to Americans who have historically trusted the U.S. savings bond program as a secure investment. And, because the savings bond rate would automatically increase and decrease with market rates,

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we can protect the Treasury Department from the type of losses it is currently experiencing in this program.

Another measure before the Committee today would amend section 314 of the Revenue Act of 1978 as it relates to certain agricultural or horticultural structures.

S. 1485 will clarify what Congress thought was its clear intent in making available the investment tax credit for poultry houses and greenhouses.

Congress enacted section 314 in order to end years of costly court battles. In 1971, the Finance Committee provided that the investment tax credit was to be allowed for the construction of special purpose agricultural structures.

Despite this expression of intent, the Internal Revenue Service continued to deny the investment tax credit to poultry producers, even though recent court decisions ruled in favor of the producers.

Because Congress felt the credit had been unfairly denied to poultry farmers by the IRS contrary to Congressional intent, the provision enacted in 1978 was made retroactive to August 15, 1971.

However, the IRS has taken the position that the investment tax credit will only be allowed retroactively to taxpayers who disputed the original IRS regulations. In other words, taxpayers who could not afford to fight the IRS and who filed returns according to the service's interpretation of the 1971

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law are now being penalized for following the law.

The IRS position is yet another example of lawabiding working Americans being denied equity by the system. The legislative intent of Congress is clear, the investment tax credit for single purpose agricultural structures is to be effective for taxable years which end on or after August 15, 1971.

However, because of another section of the Internal Revenue Code, Section 6511, which limits refunds of credits to 3 years after the tax return is filed, many taxpayers are finding that they are only eligible for the investment tax credit for expenditures made after 1976.

My legislation would simply give all taxpayers the right to claim the investment tax credit for all taxable years ending after August 15, 1971. It provides that credit or refund of the investment tax credit shall be allowed without regard to the 3 year statute of limitations.

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The Mortgage Revenue Bond Bill I have introduced, S. 2425, is aimed at facilitating the ability of State and local governments to issue mortgage revenue bonds to create capital for single-family home mortgages at below market rates.

In my view this legislation is necessary as restrictions which were placed upon mortgage revenue bond issues as a result of passage of the Omnibus Reconciliation Bill of 1980, have severely limited the ability of State and local governments to issues these bonds to the point where nearly all mortgage bond issues have been made possible only with a cash contribution on the part of the issuer. Needless to say state and local governments who are not fortunate enough to be able to provide such a contribution are now essentially precluded from being able to participate in this program.

At a time when housing starts are at the lowest point since World War II, and when few persons can afford to purchase homes at the current conventional rates, it makes no sense to me to bar a program which affords home ownership possibilities and in which virtually every State has experience to activate immediately. S. 2425 is aimed at correcting this situation.

On the matter of achieving a workable mortgage revenue bond program, I should point out that the miscellaneous tax bill, H.R. 4717, which passed last December, contains modifications, which may, if enacted with appropriate conference report language, provide for a workable program . It is my understanding that the conferrees are in fact meeting today to discuss this measure.

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It is my hope that the conferrees will take the action necessary to put a viable mortgage revenue bond program in place immediately. Should they fail in this effort, however, my bill incorporates the items from H.R. 4717 with some additional small changes, which are designed to provide more flexibility in the operation of a mortgage revenue bond program.

Today, we have a panel of witnesses representative of those who have had practical experience with mortgage revenue bonds and with the practical circumstances which present obstacles to home ownership opportuntities in today's market - The Council of State Housing Agencies, the National League of Cities, the National Association of Realtors, and the National Association of Homebuilders. I would particularly like to welcome Mr. Robert Moyer who is Director of Housing for the State of Delaware . I feel the example of the Delaware State Housing Agency 's conduct of a mortgage revenue bond program, will provide us with a first hand view of the home ownership possibilities made possible by the conduct of a responsible mortgage revenue bond program.

I believe the realiztion of a truly workable mortgage revenue bond program could provide an alternative for housing relief. The use of these bonds would enable thousands of people to purchase their own homes, create jobs in the constuction industry, and expand the local economy. Additionally, mortgage revenue bonds have the advantage of accomplishing these objectives with a minimum of Government interference and can be more responsive to local needs and demands. They are also less costly to the Federal Government than any other similar type of direct housing relief.

I look forward to the comments on S. 2425 in an attempt to structure a workable mortgage revenue bond program which could be activated immediately.

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Senator PACKWOOD. I know it is a little before 9:30, but both Senator Jepsen and Secretary Chapoton are here, so I think we will start off. We have a variety of bills we are hearing today.

And I might indicate to the audience we are debating the budget bill on the floor, and we may be interrupted from time to time with votes. So you may have to excuse us in that case. We will try to shuttle back and forth as best we can and make the votes and keep the committee going.

Our first witness today is the Honorable Roger Jepsen, Senator from the State of Iowa.

Good morning, Roger.

## STATEMENT OF HON. ROGER JEPSEN, A U.S. SENATOR FROM THE STATE OF IOWA

Senator JEPSEN. Good morning, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to appear before the Taxation Subcommittee to talk about home health care in general and the Heinz bill in particular. The distinguished chairman of the Senate Aging Committee is to be commended for his outstanding work on behalf of our Nation's elderly.

As you know, it is was almost a year ago that I became involved in the home health care issue from a legislative standpoint. Many of us have been personally involved in home health care for the elderly for many years, but it has only been recently that Washington has begun to take an interest.

As you recall, Mr. Chairman, I introduced S. 1581 last July. This bill would provide a tax credit or a tax deduction to families that take elderly relatives into their home. Senator Heinz' bill is a logical extension of this concept, and I want the committee to know that I support his effort.

One of the reasons that many people have begun to take a look at home health care is because of the tremendous growth we have seen in the nursing home industry. There is an unacceptable overreliance on nursing home care. It has gotten to the point where, according to the Congressional Budget Office, 20 to 40 percent of those persons presently living in nursing homes do not need to be there. The CBO's findings have been substantiated by a study of Massachusetts nursing homes which found that out of 100,000 nursing home residents examined, only 37 percent required full-time nursing care.

This overreliance on nursing homes is also evident in the way this whole issue is often framed. Think about it. Whenever you hear someone talking about home health care, it is generally in the context of alternatives to nursing home care. The very nature of the proposal suggests that nursing homes are the primary source of care for our elderly population.

It is my desire to see that the underlying assumptions change so that home care is not an alternative to nursing home care, but rather nursing home care becomes a last alternative to home care.

As I mentioned, Senator Heinz' bill is a logical extension of my proposal. In fact, I think the combination of our bills could make for an extremely attractive legislative package, and here is what I propose.

Under the Heinz bill, taxpayers can claim a credit for billable expenses incurred in the care of an elderly family member. What I propose is that in the case of the taxpayer who maintains a household including that elderly dependent, the taxpayer be given the option of taking the full substantiated amount, or a tax credit in the amount of $250 which would not have to be substantiated.

What we would be doing is relieving those taxpayers, who take the additional step of having the elderly relative move into the home, of the burden of having to keep records. Clearly, if the elderly relative is in the home of the taxpayer, the taxpayer would be absorbing expenses which would be covered by the Heinz proposal. Consequently, the overall cost of Senator Heinz' bill should not be increased as a result of this change.

By way of example, Mr. Chairman, I would liken this change to the provision in current tax law which allows the taxpayer to deduct State sales tax from his or her income tax. Under this provision, the taxpayer has the option of maintaining receipts to substantiate the amount of sales tax paid during the tax year or the taxpayer can take the predetermined amount without susbstantiation.

In some cases, the taxpayer is able to declare a larger deduction than might otherwise be claimed, but in many instances the actual deduction would be less than if the taxpayer opted to substantiate the deduction. In effect, we make the assumption that the taxpayer has paid sales tax.

Likewise, in my proposal, we would be making the assumption that the taxpayer has paid billable expenses. We then allow the taxpayer to determine whether or not it is worth the trouble to keep the records or simply take the predetermined amount.

I believe this is a reasonable change which, as I said, should not add to the overall cost of the Heinz bill but will help to alleviate any recordkeeping problems, no matter how small.

Mr. Chairman, when I first introduced S. 1581, and I am sure Senator Heinz had a similar experience, one of the first questions I was asked was: what would it cost? Well, I am prepared to defend my bill and Senator Heinz' bill on the basis of cost, but I think there is a more important question we must ask. And that is, what would it cost us if we do not enact home health care legislation?

Mr. Chairman, in the interest of time, I know that you have people waiting now to testify——

Senator PACKWOOD. Yes.

Senator JEPSEN. In the interest of time, then, I would ask that the balance of my remarks be entered into the record as read. And I would just close by relating a story which I believe will help put this issue in perspective.

It seems that there was a family that was very prim and proper and their house was always neat and everything was in its place and always had the best that money could buy. And the mother of the woman of the house was becoming quite old, and it became necessary for her to move in with the family, and things were not working out too well, because the older woman did not always put things away and had a tendency to drop things.

So one night at dinner, while passing the plate, the older woman dropped the plate and it broke. Needless to say, her daughter was

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outraged because this was some of her finest china. After dinner, the younger woman told her son to go down to the local market and buy a tin plate. When he asked what it was for, he was told it would be used by his grandmother so she could not break any more of the fine china.

When the little boy returned from the market, his mother discovered that he had bought two tin plates, not just one. And she asked him why he had bought two and not just one as she had instructed. And he answered, "The other plate is for you, mom, when you get old."

The moral of this story, Mr. Chairman, is quite simple: Treat your parents as you would have your children treat you.

I look forward to working with the distinguished chairman of the Senate Aging Committee as well as the distinguished chairman of the Taxation Subcommittee to bring about a meaningful piece of legislation.

Thank you, Mr. Chairman.

[The statement of Senator Jepsen follows:]

HOME HEALTH CARE: CHALLENGE OF THE EIGHTIES

STATEMENT BY U.S. SENATOR ROGER JEPSEN (R-IOWA), MAY 21, 1982

MR. CHAIRMAN, I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE THE TAXATION SUBCOMMITTEE TO TALK ABOUT HOME HEALTH CARE IN GENERAL AND THE HEINZ BILL IN PARTICULAR. THE DISTINGUISHED CHAIRMAN OF THE SENATE AGING COMMITTEE IS TO BE COMMENDED FOR HIS OUTSTANDING WORK ON BEHALF OF OUR NATION'S ELDERLY.

AS YOU KNOW, IT WAS ALMOST ONE YEAR AGO THAT I BECAME INVOLVED IN THE HOME HEALTH CARE ISSUE FROM A LEGISLATIVE STANDPOINT. MANY OF US HAVE BEEN PERSONALLY INVOLVED IN HOME HEALTH CARE FOR THE ELDERLY FOR MANY YEARS BUT IT HAS ONLY BEEN RECENTLY THAT WASHINGTON HAS BEGUN TO TAKE AN INTEREST.

AS YOU WILL RECALL, MR. CHAIRMAN, I INTRODUCED S. 1581 LAST JULY. THIS BILL WOULD PROVIDE A TAX CREDIT OR A TAX DEDUCTION TO FAMILIES THAT TAKE ELDERLY RELATIVES INTO THEIR HOME. SENATOR HEINZ' BILL IS A LOGICAL EXPANSION OF THIS CONCEPT AND I WANT THE COMMITTEE TO KNOW THAT I SUPPORT HIS EFFORT.

ONE OF THE REASONS SO MANY PEOPLE HAVE BEGUN TO LOOK AT HOME HEALTH CARE IS BECAUSE OF THE TREMENDOUS GROWTH WE HAVE SEEN IN THE NURSING HOME INDUSTRY. THERE IS AN UNACCEPTABLE OVER-RELIANCE ON NURSING HOME CARE. IT HAS GOTTEN TO THE POINT WHERE, ACCORDING TO THE CONGRESSIONAL BUDGET OFFICE, 20 - 40 PERCENT OF THOSE PERSONS PRESENTLY LIVING IN NURSING HOMES DO NOT NEED TO BE THERE. C.B.O.'s FINDINGS HAVE BEEN SUBSTANTIATED BY A STUDY OF MASSACHUSETTS NURSING HOMES WHICH FOUND THAT OUT OF

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100,000 NURSING HOME RESIDENTS EXAMINED, ONLY 37 PERCENT REQUIRED FULL-TIME NURSING CARE.

THIS OVER RELIANCE ON NURSING HOMES IS ALSO EVIDENT IN THE WAY THIS WHOLE ISSUE IS OFTEN FRAMED. THINK ABOUT IT.

WHENEVER YOU HEAR SOMEONE TALKING ABOUT HOME HEALTH CARE, IT IS GENERALLY IN THE CONTEXT OF "ALTERNATIVES TO NURSING HOME CARE." THE VERY NATURE OF THE PROPOSAL SUGGESTS THAT NURSING HOMES ARE THE PRIMARY SOURCE OF CARE FOR OUR ELDERLY POPULATION. IT IS MY DESIRE TO SEE THAT THE UNDERLYING ASSUMPTIONS CHANGE SO THAT HOME CARE IS NOT AN ALTERNATIVE TO NURSING HOME CARE, BUT RATHER NURSING HOME CARE BECOMES THE LAST ALTERNATIVE TO HOME CARE.

AS I MENTIONED, SENATOR HEINZ' BILL IS A LOGICAL EXPANSION OF MY PROPOSAL. IN FACT, I THINK A COMBINATION OF OUR BILLS COULD MAKE FOR AN EXTREMELY ATTRACTIVE LEGISLATIVE PACKAGE. HERE IS WHAT I PROPOSE.

UNDER THE HEINZ BILL, TAXPAYER'S CAN CLAIM A CREDIT FOR A PERCENTAGE OF BILLABLE EXPENSES INCURRED IN THE CARE OF AN ELDERLY FAMILY MEMBER. WHAT I PROPOSE IS THAT IN THE CASE OF A TAXPAYER WHO MAINTAINS A HOUSEHOLD INCLUDING THAT ELDERLY DEPENDENT, THE TAXPAYER BE GIVEN THE OPTION OF TAKING THE FULL SUBSTANTIATED AMOUNT, OR A TAX CREDIT IN THE AMOUNT OF $250 WHICH WOULD NOT HAVE TO BE SUBSTANTIATED.

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WHAT WE WOULD BE DOING IS RELIEVING THOSE TAXPAYERS WHO TAKE THE ADDITIONAL STEP OF HAVING THE ELDERLY RELATIVE MOVE INTO THE HOME OF THE BURDEN OF HAVING TO KEEP RECORDS. CLEARLY IF THE ELDERLY RELATIVE IS IN THE HOME OF THE TAXPAYER, THE TAXPAYER WILL BE ABSORBING EXPENSES WHICH WOULD BE COVERED BY THE HEINZ PROPOSAL. CONSEQUENTLY, THE OVERALL COST OF SENATOR HEINZ' BILL SHOULD NOT BE INCREASED AS A RESULT OF THIS CHANGE.

BY WAY OF EXAMPLE, MR. CHAIRMAN, I WOULD LIKEN THIS CHANGE TO THE PROVISION IN CURRENT TAX LAW WHICH ALLOWS THE TAXPAYER TO DEDUCT STATE SALES TAX FROM HIS OR HER INCOME TAX. UNDER THIS PROVISION, THE TAXPAYER HAS THE OPTION OF MAINTAINING RECEIPTS TO SUBSTANTIATE THE AMOUNT OF SALES TAX PAID DURING THE TAX YEAR, OR THE TAXPAYER CAN TAKE THE PREDETERMINED AMOUNT WITHOUT SUBSTANTIATION.

IN SOME CASES, THE TAXPAYER IS ABLE TO DECLARE A LARGER DEDUCTION THAN MIGHT OTHERWISE BE CLAIMED, BUT IN MANY INSTANCES THE ACTUAL DEDUCTION WOULD BE LESS THAN IF THE TAXPAYER OPTED TO SUBSTANTIATE THE DEDUCTION. IN EFFECT, WE MAKE THE ASSUMPTION THAT THE TAXPAYER HAS PAID SALES TAX. LIKEWISE IN MY PROPOSAL, WE WOULD BE MAKING THE ASSUMPTION THAT THE TAXPAYER HAS PAID "BILLABLE EXPENSES". WE THEN ALLOW THE TAXPAYER TO DETERMINE WHETHER OR NOT IT IS WORTH THE TROUBLE TO KEEP THE RECORDS OR SIMPLY TAKE THE PREDETERMINED AMOUNT.

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I BELIEVE THIS IS A REASONABLE CHANGE WHICH, AS I SAID, SHOULD NOT ADD TO THE OVERALL COST OF THE HEINZ BILL, BUT WILL HELP TO ALLEVIATE ANY RECORD-KEEPING PROBLEMS, NO MATTER HOW SMALL.

MR. CHAIRMAN, WHEN I FIRST INTRODUCED S. 1581, AND I AM SURE SENATOR HEINZ HAD A SIMILAR EXPERIENCE, ONE OF THE FIRST QUESTIONS I WAS ASKED WAS, "WHAT WILL IT COST?" WELL, I AM PREPARED TO DEFEND MY BILL AND SENATOR HEINZ' BILL ON THE BASIS OF COST. BUT, I THINK THERE IS A MORE IMPORTANT QUESTION WE MUST ASK: WHAT WILL IT COST US IF WE DO NOT ENACT HOME HEALTH CARE LEGISLATION?

ACCORDING TO THE HEALTH CARE FINANCING ADMINISTRATION, NURSING HOME COSTS ARE THE SINGLE FASTEST GROWING COMPONENT WITHIN THE MEDICAID PROGRAM. IN 1980 ALONE, NURSING HOME COSTS WERE IN EXCESS OF $20 BILLION DOLLARS. OF THIS AMOUNT, $6.5 BILLION WAS PAID BY THE FEDERAL GOVERNMENT AND $4.7 BILLION WAS PAID BY STATE GOVERNMENTS. UNLESS CHANGES ARE MADE, THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ESTIMATES THAT NURSING HOME COSTS WILL BE IN THE NEIGHBORHOOD OF $80 BILLION DOLLARS BY 1990!

RIGHT NOW, MR. CHAIRMAN, THERE ARE APPROXIMATELY 1.3 MILLION ELDERLY PERSONS, MOST OF WHOM ARE MEDICAID RECIPIENTS, RESIDING IN NURSING HOMES. THIS REPRESENTS APPROXIMATELY 5 PERCENT OF THE TOTAL ELDERLY POPULATION. THEN, CONSIDER THE FACT THAT MEDICAID NURSING HOME COSTS CONSUME 41 CENTS OUT OF EVERY DOLLAR

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WE SPEND IN THE MEDICAID BUDGET. WHAT THIS MEANS IS THAT WE ARE SPENDING OVER 40 PERCENT OF OUR MEDICAID BUDGET, TO SERVE LESS THAN 5 PERCENT OF THE ELDERLY POPULATION. HOW MUCH DO WE SPEND FOR HOME HEALTH CARE? APPROXIMATELY 1 PENNY OUT OF EVERY MEDICAID DOLLAR SPENT!

IT IS NOT HARD TO SEE WHERE THE FEDERAL GOVERNMENT THINKS WE SHOULD TAKE CARE OF OUR ELDERLY POPULATION.

THE SAD POINT OF THIS SITUATION IS THAT NO ONE WANTS TO SEE SUCH EMPHASIS PLACED ON NURSING HOME CARE. THE ELDERLY DON'T WANT TO GO TO NURSING HOMES, FAMILIES DON'T WANT TO PUT ELDERLY RELATIVES IN NURSING HOMES, AND I DOUBT IF YOU CAN FIND ONE MEMBER OF CONGRESS WHO WOULD ARGUE THAT NURSING HOMES SHOULD COMMAND SUCH AN IMPORTANT PLACE IN THE HEALTH CARE SCHEME.

BOTH SENATOR HEINZ AND I WANT TO SEE GREATER RELIANCE PLACED ON HOME HEALTH CARE AS THE MEANS OF CARING FOR OUR ELDERLY POPULATION. THE IDEA OF USING TAX CREDITS OR TAX DEDUCTIONS TO ACHIEVE THIS GOAL HAS RECEIVED WIDESPREAD SUPPORT. SOME OF THE ORGANIZATIONS THAT SUPPORT THIS CONCEPT ARE:

THE 1981 WHITE HOUSE CONFERENCE ON AGING
THE AMERICAN ASSOCIATION OF RETIRED PERSONS
THE NATIONAL RETIRED TEACHERS ASSOCIATION
THE NATIONAL HOMECARING COUNCIL
THE AMERICAN HOSPITAL ASSOCIATION
THE AMERICAN ASSOCIATION OF HOMES FOR THE AGING

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TO NAME JUST A FEW.

IN ADDITION, MR. CHAIRMAN, A POLL HAS BEEN CONDUCTED WITHIN THE PAST YEAR WHICH SHOWS THE OVERWHELMING PUBLIC SUPPORT FOR THIS CONCEPT. IN A SURVEY CONDUCTED BY LOUIS HARRIS AND ASSOCIATES, FOR THE NATIONAL COUNCIL ON AGING, IT WAS FOUND THAT BY A MARGIN OF 90% - 7%, THE 18 - 64 AGE GROUP APPROVES OF THE IDEA OF GIVING TAX BREAKS TO FAMILIES THAT PROVIDE HOME HEALTH CARE FOR THE ELDERLY.

IF CONGRESS WANTS TO IGNORE PUBLIC SENTIMENT, IGNORE THE POLLS SHOWING THE SUPPORT, IGNORE THE RESOLUTION ADOPTED BY THE WHITE HOUSE CONFERENCE ON AGING AND IGNORE THE PLEAS OF MILLIONS OF OLDER AMERICANS FROM ALL ACROSS THE COUNTRY, THAT IS OUR RIGHT. BUT AT LEAST LET'S LOOK AT THE ECONOMICS OF THE IDEA.

IT CURRENTLY COSTS THE FEDERAL GOVERNMENT APPROXIMATELY $5,000 PER YEAR FOR EVERY MEDICAID RECIPIENT LIVING IN A NURSING HOME. IN ADDITION, IT COSTS THE STATES ANOTHER $4,000 PER YEAR FOR EVERY MEDICAID RECIPIENT IN A NURSING HOME. CONSEQUENTLY, FOR EVERY FAMILY THAT OPTS TO TAKE EITHER THE HEINZ TAX CREDIT OR THE JEPSEN TAX CREDIT, IN LIEU OF PLACING AN ELDERLY RELATIVE IN A NURSING HOME, THE FEDERAL GOVERNMENT CAN POTENTIALLY SAVE OVER $4,000 AND THE STATES CAN SAVE ANOTHER $4,000.

ALTHOUGH I HAVE NOT RECEIVED AN OFFICIAL STATEMENT, THESE FIGURES HAVE BEEN RUN BY THE GENERAL ACCOUNTING OFFICE AND

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I UNDERSTAND THEY ARE ACCURATE. I WOULD ASK THAT THE RECORD BE KEPT OPEN SO THAT MY STAFF CAN SUBMIT AN ANALYSIS WHICH SHOWS HOW THESE POTENTIAL SAVINGS FIGURES WERE ARRIVED AT.

REST ASSURED, MR. CHAIRMAN, ONCE A PERSON MAKES THE DECISION TO ENTER A NURSING HOME, IT IS THE EXCEPTION RATHER THAN THE RULE THAT THE PERSON RETURNS TO THE COMMUNITY. IN ADDITION, EVEN IF THE PERSON WAS NOT ELIGIBLE FOR MEDICAID WHEN HE OR SHE ENTERED THE NURSING HOME, CHANCES ARE THE PERSON WILL BE ELIGIBLE WITHIN A SHORT PERIOD OF TIME.

IT ALL BOILS DOWN TO THIS, MR. CHAIRMAN: IS THE UNITED STATES SENATE WILLING TO TAKE A CHANCE, INVEST SOME MONEY NOW, BY LETTING FAMILIES KEEP SOME MONEY THEY WOULD HAVE OTHERWISE PAID IN TAXES, IN THE HOPE THAT IT WILL PREVENT UNNECESSARY INSTITUTIONALIZATION OF THE ELDERLY. OR, IS THE FEDERAL GOVERNMENT GOING TO JUST SIT BACK AND TAKE A "BUSINESS AS USUAL" ATTITUDE TOWARDS HOME HEALTH CARE. BECAUSE I ASSURE YOU, IF WE OPT FOR THE LATTER, WE WILL BE FORCING THOUSANDS OF OLDER AMERICANS TO ENTER NURSING HOMES BECAUSE CONGRESS WAS AFRAID TO ACT.

IN CLOSING, I WOULD LIKE TO RELATE A STORY WHICH I BELIEVE WILL HELP PUT THIS ISSUE IN PERSPECTIVE.

IT SEEMS THERE WAS A FAMILY THAT WAS VERY PRIM AND PROPER AND THEIR HOUSE WAS ALWAYS NEAT, EVERYTHING IN PLACE, AND ALWAYS THE BEST THAT MONEY COULD BUY. WELL, THE MOTHER OF

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THE WOMAN OF THE HOUSE WAS BECOMING QUITE OLD, AND IT BECAME NECESSARY FOR HER TO MOVE IN WITH THE FAMILY. THINGS WERE NOT WORKING OUT TOO WELL BECAUSE THE OLDER WOMAN DID NOT ALWAYS PUT THINGS AWAY AND HAD A TENDENCY TO DROP THINGS.

ONE NIGHT AT DINNER, WHILE PASSING HER PLATE, THE OLDER WOMAN DROPPED THE PLATE AND IT BROKE. NEEDLESS TO SAY, HER DAUGHTER WAS OUTRAGED BECAUSE THIS WAS SOME OF HER FINE CHINA. AFTER DINNER, THE YOUNGER WOMAN TOLD HER SON TO GO DOWN TO THE LOCAL MARKET AND BUY A TINPLATE. WHEN HE ASKED WHAT IT WAS FOR, HE WAS TOLD IT WOULD BE USED BY HIS GRANDMOTHER SO SHE COULD NOT BREAK ANY MORE OF THE FINE CHINA.

WHEN THE LITTLE BOY RETURNED FROM THE MARKET, HIS MOTHER DISCOVERED THAT HE HAD BOUGHT TWO TINPLATES AND NOT JUST ONE. SHE ASKED HIM WHY HE HAD BOUGHT TWO AND NOT JUST ONE AS SHE HAD INSTRUCTED AND HE ANSWERED, "THE OTHER PLATE IS FOR YOU, MOM, FOR WHEN YOU GET OLD."

THE MORAL OF THIS STORY, MR. CHAIRMAN, IS QUITE SIMPLE. TREAT YOUR PARENTS AS YOU WOULD HAVE YOUR CHILDREN TREAT YOU.

I LOOK FORWARD TO WORKING WITH THE DISTINGUISHED CHAIRMAN OF THE SENATE AGING COMMITTEE, AS WELL AS THE DISTINGUISHED CHAIRMAN OF THE TAXATION SUBCOMMITTEE TO BRING ABOUT A MEANINGFUL PIECE OF LEGISLATION.

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Senator PACKWOOD. Thank you, Senator.

Senator Dole.

Senator DOLE. I have no questions.

I would like to include a statement in the record. And I apologize to the Kansas witness who will appear later, but I am involved in the discussions on the Senate floor and must go to Senator Baker's office.

[The prepared statement of Senator Dole follows:]

STATEMENT OF SENATOR BOB DOLE:
MISCELLANEOUS TAX BILL HEARING--MAY 21, 1982

## Introduction

At today's hearing, the Subcommittee on Taxation and Debt Management will consider four bills, one measure that would raise the allowable interest rate on U.S. savings bonds, and three miscellaneous tax bills.

## Raising the Interest Rate on U.S. Savings Bonds

The goal of S. 2075 is to raise the maximum allowable interest rate on U.S. savings bonds, now set at 9 percent for eight-year bonds. This bill would raise the interest rate to a rate competitive with other comparable investments. The Treasury has its own proposal to accomplish a similar result, and I understand they will be testifying on their savings bond proposal at next week's hearing on the public debt limit. I believe proposals like this are desirable to help the U.S. savings bond program. Of course, I hope that lower interest rates will make the need for this legislation less critical than it now seems to be.

To help bring interest rates down, it is essential that Congress act to reduce the serious Federal deficits we expect to face in the next few years. This goal, together with fundamental fairness, must be our highest priorities in considering measures referred to the Finance Committee.

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## Three Miscellaneous Bills

The three tax bills before the Subcommittee today have laudable goals--helping to care for the elderly and disabled, stimulating housing development, and promoting equity in the administration of the investment tax credit.

All of these tax bills will cost money rather than raise it. Unfortunately, we must keep that sobering fact in mind as these and other well-intentioned bills are considered.

In addition, as the tax code grows with new ideas for subsidies and incentives, we must keep in mind the long-term goal of tax simplification. Maybe we won't simplify the code much this year, but we should at least try not to make it more complicated. When new tax subsidies or tax credits are proposed, we must carefully consider whether the tax code is the appropriate tool for expressing or accomplishing a desirable social or economic goal.

I look forward to hearing and studying the comments of the distinguished witnesses testifying today on the proposals before the Subcommittee.

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Senator PACKWOOD. I would only say that in this budget we are considering, we are asked to raise $107 billion in new taxes, and as I look at these bills, they all cost money. And I think that is a fact that we must keep in mind. I do not see how we are going to spend more money we do not have when we cannot balance the budget now.

Plus, I think it is a question of how far we go with how do we make tax policy and what should we do with revenues and how we should use credits. And we will be looking at all of these things in the next few weeks trying to figure out how to raise $107 billion. And I am certain that if they save money, they will be seriously considered.

Senator JEPSEN. I think you will find this type of legislation would, in fact, save money. It is proven time and time again, most recently with the example in Cedar Rapids, Iowa, with the young lady in the hospital there because the law said the rules were she had to be there, costing something like, well, many, many thousands of dollars every week.

For parents who are taken care of in their home, it has got to be healthier both mentally and physically for them. But it has also got to be economically much better for everybody concerned.

Thank you, Mr. Chairman.

Senator PACKWOOD. We had some hearings on that almost a year ago now, in terms of how much money we would save if we had home health care rather than the required hospitalization that you often are required to do before you can have any Medicare coverage or any other kind of coverage.

And as you look at nursing home costs and hospital costs, the evidence we have—and we had some empirical evidence from three or four programs around the country in different areas—we will save money on home health care from the Federal Government standpoint. Absent any further benefit which is perfectly valid from the psychological state of the person, we will save Federal money.

Senator Roth.

Senator ROTH. I have no questions, Mr. Chairman.

Senator PACKWOOD. Roger, thank you very much.

Next we will hear from Secretary Chapoton. The policy we follow in this subcommittee is we ask the witnesses to keep their statements to 5 minutes. Their entire statement will be placed in the record. And this gives us a chance for questions. We do not apply that rule to the Treasury Department representatives because they are here to comment on all the bills that are before us, whereas normally the witnesses are here to comment on just one bill of the many that we are hearing that day.

Secretary Chapoton.

## STATEMENT OF HON. JOHN E. CHAPOTON, ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY

Mr. CHAPOTON. Thank you, Mr. Chairman. I am going to comment on the three tax bills. I just want to mention S. 2075, which would change the interest rate on U.S. savings bonds. I want to note the Department's agreement that there is an urgent need for

legislation to permit a more flexible interest rate and to modernize the savings bond program. The Treasury will present testimony on that in the near future in connection with the debt limit bill. And so I will not comment on that legislation further at this time.

The first bill I would like to comment on is S. 1485, which relates to the investment tax credit for single-purpose agricultural or horticultural structures, added by the Revenue Act of 1978. Section 314 of that act specifically allowed the investment tax credit for these type of structures.

The legislative history of 314 of the 1978 act indicated that the provision was intended to clarify prior law. Therefore, the section was made applicable retroactively to taxable years ending after August 15, 1978, the date the investment tax credit was restored to the law. Thus, section 314 would have applied the credit—that is, made structures eligible for the credit—for all years since the credit was restored after the suspension period from 1969 to 1971.

The 1978 act, however, was silent as to the effect of the statute of limitations of the tax law. Therefore, the Internal Revenue Service took the position that the act did not open up the statute of limitations. As a result, refunds on the basis of the credit were denied for closed years.

S. 1485 would change that result and open the statute of limitations for a period of 1 year after the enactment of the bill.

Mr. Chairman, we are opposed to reopening the statute of limitations for a number of reasons. First, I want to point out that when Congress has decided in connection with retroactive legislation—and there is often retroactive legislation—that it intends to override the statute of limitations, it does so specifically and clearly because such a rule is required.

I cite in my written statement a couple of recent examples where this was done. Thus, S. 1485 would not be merely giving effect to what Congress intended in 1978 but it would enact a new rule which goes beyond the 1978 changes in the investment tax credit provision.

We also point out in the statement that we think the purpose of the statute of limitations is a sound purpose. After a period of time, no adjustments should be made in tax liability either by the taxpayer or by the Service. We think a rule that prevents reopening old matters where records are lost, where recollections are clouded, or taxpayers go out of existence, is a sound rule.

And we would also point out that the argument that failure to reopen the statute is unfair to those whose years are closed only because they did not litigate the investment tax credit is not necessarily a sound argument. Taxpayers choose not to litigate for a number of reasons. For example, the taxpayer may have settled the item with the IRS in exchange for favorable disposition of other items.

In any event, all taxpayers who decide not to litigate take the risk that the issue will ultimately be resolved against the Government by taxpayers who do litigate. In these cases the adverse determination against the Government will not apply to the taxpayer who chooses not to litigate. We do not think that a different rule should apply simply because we are handling this by legislation

rather than by litigation, particularly when we are talking about a rule that has gone by some 11 years ago.

I would also mention the unfavorable precedential effect such change would have. As I mentioned, a number of provisions in the tax law are made retroactive. We would be very concerned about any rule that adopted or indicated a presumption that any retroactive change is intended to reopen closed years, since it would greatly compound the problem raised by retroactive changes in the tax law.

Turning to S. 2424, as Senator Jepsen mentioned, this bill would create a new tax credit for certain expenses of maintaining elderly relatives. There are now three provisions in the tax law which would relate to the same area. One is the $1,000 dependency exemption for an elderly dependent. The second is a nonrefundable dependent care tax credit which is allowed for a percentage of a taxpayer's qualifying expenses for care of a dependent if the expenses are incurred to enable the taxpayer to be gainfully employed. And third, a taxpayer, of course, may be allowed medical expense deduction for a dependent's medical expenses that do not qualify for the dependent care credit.

S. 2424 would allow a credit for qualified elderly care expenses incurred in respect of a qualifying family member. A qualifying family member would be a relative who is at least 75 years of age or is diagnosed as having a certain form of premature senility and who has adjusted gross income of $15,000 or less. A qualifying family member would not have to be a dependent of the taxpayer. The percentage of qualified expenses eligible for the new credit would be based upon a sliding scale depending upon the taxpayer's adjusted gross income. Those having less than $10,000 of adjusted gross income would get a 30 percent credit, and the credit would slide to 20 percent credit for adjusted gross income between $28,000 and $50,000, and above $50,000 there would be no credit available.

The maximum credit would be $1,050 for one qualifying family member, or twice that for two or more.

The purpose of S. 2424 is, of course, to provide financial assistance to allow families to continue caring for their chronically ill elderly relatives at home rather than in institutions, as Senator Jepsen mentioned. And this obviously is a desirable social policy. But it also raises monumental questions concerning the appropriate means for providing long-term care of the elderly and the best means of financing such care.

We are not going to comment on the fundamental questions of financing that are involved in this issue. But we do raise a question as to whether the Federal tax system should be used to deliver this benefit, since use of the tax system obviously would circumvent the established budget and appropriation procedures.

This bill would also provide tax benefits for care of many relatives who would be capable of paying for their own care. As I mentioned, the key feature of the bill is that they need not be dependents. There is a $15,000 ceiling on a qualifying relative's adjusted gross income. That, of course, does not take into account social security or tax-exempt income, nor does it take into account other financial resources that the relative may have. And these are, we

would point out, important items bearing on the relative's ability to pay for his own care.

We would also point out that since the credit would not be available for payments by an elderly person to pay for his own care, the bill would encourage family members to rearrange their financial affairs so that the payments could be made by younger family members and thus be eligible for the credit.

We would also point out the complexity that any additional coverage of these types of expenditures under the tax law would cause. As I mentioned, we already have three provisions which would cover similar expenses. This would add a fourth. Expenses eligible under one of the code sections might qualify under another or might not qualify, since the rules governing each are slightly different. We should, I think, resist any provision which adds significant complexity to the law, particularly when it covers a large number of taxpayers and requires significant additional record-keeping, a point that Senator Jepsen addressed and that merits attention if something like this were enacted.

Finally, we oppose refundability of the credit. We think it is undesirable to use the tax system as a means for distributing cash payments for a specific purpose regardless of how worthy that purpose might be from a social standpoint. Refundable credits cause administrative problems. They require the Federal Government to make an out-of-pocket payment prior to the audit determination that the credit was properly claimed. And, of course, they remove the tax system from the purpose of simply raising revenue. For these reasons, we oppose in all cases refundability of the credit.

Finally, Mr. Chairman, I would like to discuss S. 2425. This bill would make amendments to certain provisions of the Mortgage Subsidy Bond Tax Act of 1980. Under that act, tax-exempt financing is available for certain single-family residences and, particular multifamily central housing projects.

The Mortgage Subsidy Bond Tax Act contains program restrictions designed to insure that the below-market financing available through tax exemption is limited to the individuals who are most in need of assistance in financing their first home. The program restrictions in that legislation largely direct the benefits to first-time homebuyers who are purchasing moderately priced homes.

The general rule is that the price of a home cannot exceed 90 percent of the average area purchase price. In targeted areas, the 90 percent limit is increased to 110 percent.

S. 2425 would significantly increase the class of individuals eligible for housing assistance under the tax-exempt mortgage bond program. In nontargeted areas, the bill would permit up to 20 percent of the mortgagors to be existing homeowners.

It would also increase the allowable purchase price of homes from 90 percent to 110 percent of the average area purchase price in nontargeted areas and from 110 percent to 120 percent in the targeted areas. The increase in the purchase price in combination with allowing 20 percent of the mortgagors to be existing homeowners would expand the mortgage bond program to higher-income families. Based on the current national average purchase price, new homes selling for $74,000 would qualify under existing law and $91,300 in targeted areas.

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Under S. 2425 the average purchase price limit would increase to $91,300 and in targeted areas the permissible price would increase to $99,600. The type of purchasers that would become eligible are clearly individuals that we think have sufficient incomes to purchase higher priced homes and are less in need of governmental assistance in financing their homes. More importantly, the liberalization of these eligibility requirements would significantly change the focus of the mortgage bond program.

One of the concerns that has given rise to legislative proposals such as these has been the low volume of mortgage bonds to date. We do not believe it is necessary to change the focus of the housing bond program to insure that States will issue the maximum amount allowable per State under the mortgage revenue bond legislation.

The main reason that has been holding back mortgage revenue bond issues is the high tax-exempt interest rate. However, there has been a steady decline in the tax-exempt interest rate for the past month and a half. The rate, which had been over 14 percent is now in the 12.5-percent range. As a result we are seeing a larger volume of mortgage revenue bond issues. Over $700 million of single-family mortgage revenue bonds were issued in April alone. We would expect that most States will be able to issue close to their State volume ceilings in 1982 and 1983.

If the eligibility criteria were expanded, as proposed in S. 2425, housing bond proceeds would be used disproportionately for the new eligible families since they are better credit risks and could better afford existing mortgage interest rates. An expansion of the eligibility criteria therefore would favor higher income homeowners at the expense of low- and moderate-income first-time home buyers.

The bill would also amend the arbitrage restrictions in the legislation in two ways. First and most important, it would increase the allowable arbitrage limitation which is 1 percent under the existing law, to 1.25 percent. Second, it would allow issuers not to reduce their reserves as their annual debt service fell, if such a reduction would require the issuer to sell a nonmortgage investment at a loss. We have no objection to the second change. We do object to increasing the general arbitrage limit from 1 percent to 1.25 percent.

I would just mention that H.R. 4717, which is about to go to conference, would increase the allowable arbitrage rate to 1 1/16 percent, and then on a sliding scale for bond issues of below $100 million up to 1 1/8 percent. We are supporting that increase. We do not think, though, there should be an increase beyond the increase in H.R. 4717. Therefore, we oppose this provision of the bill.

S. 2425 would also eliminate the registration requirement for mortgage revenue bonds. We support the current registration requirement. Indeed, we support legislative proposals that would broaden the registration requirement for tax-exempt bonds because of our concern that unregistered bearer bonds are used as a means of laundering illicit funds and of avoiding estate and gift taxes. We think registration is not a problem for tax-exempt obligations and does not raise administrative costs. Thus, we would support exten-

sion rather than retraction of the requirement that tax-exempt bonds be registered.

The bill would also extend the mortgage revenue bond program from the present expiration date at the end of 1983 for 2 years through the end of 1985. We are opposing extension of the mortgage revenue bond program. We do not think that this program should be permanent. It is, we think, an inefficient way to provide benefits to home buyers. And while the mortgage revenue bond program might be appropriate and is certainly going to continue through 1983, during a time when potential home buyers are having difficulty affording mortgages with high interest rates, we would oppose any extension of it beyond that date.

Finally, the bill makes a couple of changes in the provisions of the mortgage revenue bond legislation relating to multifamily rental housing. Basically, the legislation requires for a 20-year period that 20 percent of the residents of a multifamily project be families of low or moderate income. The bill would reduce the 20-year period to the longer of 10 years or one-half of the term of the obligation. We have no objection to that change.

It would also make a definitional change in the persons who are considered individuals of low or moderate income. We have no objection to the change that defines low or moderate income as gross income which is 80 percent or less than the local median gross income.

We do object to the change that would allow the Department of Housing and Urban Development to allow some individuals above that income level to qualify on rather uncertain criteria, such as other factors prevailing in the area. We would not want any broadening of the definition of qualified individuals.

Mr. Chairman, that concludes the summary of our statement.

[The statement of Mr. Chapoton follows:]

STATEMENT OF
THE HONORABLE JOHN E. CHAPOTON
ASSISTANT SECRETARY (TAX POLICY)
DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE SENATE FINANCE COMMITTEE

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to present the views of the Treasury Department on the following bills: S. 1485, which would open the statute of limitations in closed taxable years for refund claims based on the provision of the Revenue Act of 1978 relating to investment tax credits for single purpose agricultural or horticultural structures; S. 2424, which would allow a tax credit for home health care expenses incurred in caring for an elderly family member; and S. 2425, which would make a number of amendments to provisions of the Internal Revenue Code that were enacted in the Mortgage Subsidy Bond Tax Act of 1980.

With regard to S. 2075, which would change the interest rate on U.S. Savings Bonds, the Treasury Department agrees that there is an urgent need for legislation to permit a more flexible interest rate and modernize the Savings Bond Program. Treasury will be testifying on the debt limit in the near future and would like to present the Department's proposals with respect to the Savings Bond Program at that time.

I will now discuss the Treasury Department's views on S. 1485, S. 2424, and S. 2425.

S. 1485: Investment Tax Credit for Single Purpose Agricultural or Horticultural Structures

Section 314 of the Revenue Act of 1978 amended the investment tax credit (ITC) provisions of the Code specifically to allow the ITC for certain single purpose agricultural or horticultural structures. The legislative history of section 314 indicated that the provision was intended to clarify prior law, specifically a statement in the legislative history of the Revenue Act of 1971 -- which restored the ITC to the Code -- indicating that the restored



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credit was to apply to special purpose structures. Accordingly, section 314 was made applicable retroactively to taxable years ending after August 15, 1971, the date the ITC was restored.

Section 314, however, was silent as to the effect of the provision on years that were otherwise closed by the statute of limitations. Section 6511 of the Code provides generally that no credit or refund is allowable unless a taxpayer files a claim within the later of 3 years after the return is filed or 2 years after the tax is paid. Section 314 did not specifically override this rule of general applicability.

S. 1485 would allow the refund or credit notwithstanding this period of limitations. Specifically, S. 1485 provides that if a refund or credit arising from the allowance of the ITC by section 314 is prevented by the operation of any rule of law (such as the statute of limitations), a refund or credit is nonetheless allowable if a claim is filed within one year of enactment of the bill.

The Treasury Department opposes S. 1485.

At the outset, it should be noted that it is not essential that closed years be reopened when Congress intends to give retroactive relief as it did in enacting section 314 of the Revenue Act of 1978. On the contrary, when Congress enacts a retroactive provision and intends to override the statute of limitations, it does so in clear and unmistakable terms. A very recent example is section 421(k)(5)(D) of the Economic Recovery Tax Act of 1981, which amended the special estate tax valuation rules of section 2032A of the Code. These changes were retroactive and the statute of limitations specifically was reopened to cover claims filed within a 6-month period. Another example is section 3(e) of Public Law 95-427, relating to the exclusion for subsistence allowances paid to State police officers. The Congress did not override the statute of limitations with respect to section 314 of the Revenue Act of 1978. Accordingly, S. 1485 does not ask this Congress merely to give effect to what the 95th Congress intended, but rather asks this Congress to enact a new rule relating to the effect of the 1978 changes to the ITC provisions.

We believe the rule proposed by S. 1485 to be inappropriate. As a general matter, Treasury opposes the reopening of years which are closed by the statute of limitations. The purpose of a statute of limitations in tax matters is to assure that, after a period of time, no further adjustments can be made, either by the taxpayer or the Internal Revenue Service. After some period, taxpayers should be able to rely on the fact that the Government has not pursued any potential claims. Similarly, the tax system is well served by a rule that prevents taxpayers from

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reopening old matters. After some period, records are lost, recollections become clouded, or taxpayers go out of existence. Thus, the statute of limitations generally serves to prevent the redetermination of tax liabilities for prior periods after an appropriate period of time has passed.

Further, we do not necessarily agree with the argument that failure to reopen the statute is unfair to those whose years are closed only because they did not litigate the ITC issue. Generally, in deciding not to litigate an item, a taxpayer foregoes the possibility that a court will find in his favor. A taxpayer may choose not to litigate for a number of reasons. For example, he may have elected to settle the item with the IRS in exchange for favorable disposition of other issues. Alternatively, he may have decided that the benefit of successful litigation would not justify the cost. In all such cases, the taxpayer who decides not to litigate his case runs the risk that the issue will ultimately be resolved against the Government. However, the adverse determination of the issue in the taxpayer's case is generally final with respect to that taxpayer, even if the issue is ultimately resolved in favor of taxpayers generally. We do not believe that a different rule should apply in this context.

Finally, this bill would have an unfavorable precedential effect. A number of provisions that have been added to the Code in recent years have retroactive effective dates. We are concerned that enactment of S. 1485 will lead to requests that such other provisions also be applied without regard to the statute of limitations. Aside from the revenue loss that would be generated, adopting a presumption that all retroactive legislation is intended to reopen closed years would greatly compound the problems raised by retroactive changes in the tax laws.

## S. 2424: Tax Credit for Health Care Expenses of Elderly Family Members

S. 2424 would create a new tax credit for certain expenses of maintaining elderly relatives. Treasury opposes S. 2424.

Current law provides taxpayers a variety of tax benefits in respect of expenditures for relatives who are dependents. A taxpayer is allowed a dependency exemption of $1,000 for each dependent, including specified relatives having less than $1,000 of gross income, for whom the taxpayer furnishes at least one-half of the support during the calendar year. (Section 151 of the Code.) In addition, a nonrefundable "dependent care" tax credit is allowed for a percentage of a taxpayer's qualifying expenses for care of a dependent if the expenses are incurred to enable the taxpayer to be gainfully

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employed. (Section 44A of the Code.) Qualifying expenses for purposes of the dependent care credit include payments for household services and for in-home and certain out-of-home care of a dependent who is physically or mentally incapable of caring for himself. Finally, a taxpayer may be allowed a medical expense deduction for a dependent's medical expenses that do not qualify for the dependent care credit. (Section 213 of the Code.)

Present law does not provide a tax credit or deduction for expenses of maintaining in a taxpayer's home an elderly relative who is not a dependent, or for expenses of maintaining a dependent (other than medical expenses) which are not "employment-related expenses" under the special rules applicable to the dependent care credit. S. 2424 would create a new tax credit for these types of expenses.

The credit provided by S. 2424 would apply to "qualified elderly care expenses" incurred in respect of a "qualifying family member." A "qualifying family member" is any relative who is at least 75 years of age (or is diagnosed as having a certain form of premature senility) and who has an adjusted gross income of $15,000 or less (including the adjusted gross income of the relative's spouse). A qualifying family member need not be a dependent of the taxpayer. "Qualifying elderly care expenses" eligible for the credit include unreimbursed payments for certain home health agency services, homemaker and adult day care services, or health-care equipment and supplies. The percentage of qualified expenses eligible for the new credit would be based on a sliding scale, ranging from 30 percent of qualifying expenses for taxpayers with less than $10,000 of adjusted gross income, to 20 percent for taxpayers with adjusted gross incomes between $28,000 and $50,000. No credit would be available to a taxpayer with adjusted gross income exceeding $50,000 ($25,000 in the case of a married individual filing separately). The maximum allowable credit would be limited to $1,050 for one qualifying family member and $2,100 for two or more qualifying family members. Allowable credits would be refundable if they exceeded the taxpayer's tax liability. The bill would disallow any duplicative credits or deductions under other Code provisions for expenditures qualifying for the new credit.

The stated purpose of S. 2424 is to provide financial assistance to allow families to continue caring for their chronically ill elderly relatives at home, rather than in institutions, while at the same time preserving financial independence of the relatives. Although this objective may be desirable as a social policy, the subject matter of the bill raises fundamental questions concerning the appropriate means for providing long-term care of the elderly and the best means of financing such care. Even if it were determined that a subsidy for in-home care of elderly

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relatives is warranted, we question whether the Federal tax system should be used to deliver the subsidy, since such use would circumvent the established budget and appropriations controls. In addition, it would impose on the Internal Revenue Service the duty of administering a new social program at a time when the agency is hard-pressed to perform its primary duty of collecting the tax liabilities owed to the Federal Government.

S. 2424 would provide tax benefits for care of many relatives who are capable of paying for their own care. A key feature of the bill is that qualifying relatives need not be dependents of the taxpayer, nor must they be physically or mentally incapacitated. The $15,000 ceiling on a qualifying relative's adjusted gross income, presumably intended to be a measure of the relative's need, does not take into account the relative's social security and other nontaxable income, such as municipal bond income, or other financial resources. These are obviously important items bearing on the relative's ability to pay for his own care. We question whether Federal subsidies are warranted for payments for the benefit of nondependent relatives who can fend for themselves, especially in these times of budgetary constraint.

Moreover, since the credit would not be available for payments made by an elderly individual for his own care, S. 2424 would encourage families to arrange their financial affairs so that such payments could be made by younger family members in order to qualify for tax benefits.

S. 2424 also would add a new level of complexity to the tax treatment of expenditures for the care of relatives. This would be directly contrary to the growing sentiment that the tax laws, and particularly provisions that affect broad groups of individual taxpayers, should be simplified rather than further complicated. Many of the expenditures for the care of dependents that would be covered by the proposed credit are creditable or deductible under other Code provisions. The tax treatment of these expenditures would have to be determined under four different Code sections: the new elderly care credit, the dependent care credit (section 44A), the medical expense deduction (section 213), and the dependency exemption (section 151). Expenses not eligible under one of these Code sections might qualify under another since the rules governing each are slightly different. In addition, the proposed credit would impose new recordkeeping requirements on many taxpayers who do not now itemize deductions.

Finally, Treasury strongly opposes refundability of the proposed credit. We believe that it is highly undesirable to use the Federal tax system as a means for distributing cash payments for specific purposes, however worthy the social or economic objective. Furthermore, refundable credits are

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expensive and difficult to administer and audit. A refundable credit requires the Federal Government to make an out-of-pocket payment prior to an audit determination that the credit was properly claimed. An audit of the credit may not occur for years, if at all.

For these reasons, Treasury opposes S. 2424.

## S. 2425: Amendments to the Mortgage Subsidy Bond Tax Act of 1980

S. 2425 would amend certain of the provisions of the Mortgage Subsidy Bond Tax Act of 1980 (the Act). The changes relate to the use of mortgage revenue bonds (MRB's) for single family residences and also affect the provisions of the Act relating to the issuance of tax-exempt industrial development bonds for multifamily housing projects. The Treasury Department opposes those provisions of S. 2425 which would make changes in the arbitrage limitations for mortgage subsidy bonds beyond the changes already in H.R. 4717 as passed by the Senate. Treasury is opposed to the repeal of the requirement that such bonds be registered. We also oppose any effort to change the eligibility requirements or to extend the MRB provisions for owner-occupied housing beyond the current expiration date of December 31, 1983.

### Background on Single Family Mortgage Bonds

Current law contains a series of program restrictions intended to target the subsidy made available through the use of tax-exempt MRB's to low or moderate income homebuyers. To this end, mortgages financed with bond proceeds must meet a series of eligibility requirements. A residence which is financed with the proceeds of a tax-exempt MRB must be the principal residence of the mortgagor. The mortgagor may not have had a prior ownership interest in a principal residence at any time during the immediately preceding three years ("first-time homebuyer requirement"). Finally, the acquisition cost of an eligible residence may not exceed 90 percent of the average area purchase price for single family residences in the area in which the residence is located.

In the case of residences located in "targeted areas", the first-time homebuyer requirement is waived and the purchase price limitation is raised to 110 percent of the average area purchase price. A targeted area is defined to include a "qualified census tract" or an "area of chronic economic distress". A qualified census tract is a census tract in which at least 70 percent of the families have an income that is 80 percent or less than the statewide median family income. An area of chronic economic distress is an area designated by a State and approved by the Secretaries of Housing and Urban Development and Treasury in accordance with

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criteria specified in the Act.

To limit the potential growth of tax-exempt mortgage bonds and their impact on borrowing costs for traditional public activities, the Act imposes a limit on the aggregate amount of qualified MRB's which may be issued within any State during a calendar year. The amount of this volume cap is equal to the greater of $200 million or 9 percent of the average of mortgages for single family residences originated in the State during the preceding three years.

In order to insure that most of the benefit of tax-exempt financing is enjoyed by the mortgagors, the Act contains a series of provisions which limit the amount of arbitrage that may be earned by an issuer. The effective interest rate on mortgages made to homeowners is limited to one percentage point above the yield on the bonds. All arbitrage earnings on nonmortgage investments are required to be paid or credited to mortgagors or, at the election of the issuer, rebated to the Federal government.

Finally, the authority to issue registered single family mortgage bonds is scheduled to expire on December 31, 1983.

Program Restrictions

The program restrictions contained in the Act are designed to insure that the below-market financing made available through the tax exemption is limited to individuals who are most in need of assistance in financing their first home. Thus, the program is largely directed to first-time homebuyers who are purchasing moderately priced homes (no greater than 90 percent of the average area purchase price). In targeted areas, the interest subsidy is available to all buyers of homes with a purchase price no greater than 110 percent of the average area purchase price.

The amendments in S. 2425 would significantly increase the class of individuals eligible for housing assistance under the tax-exempt mortgage bond program. In nontargeted areas, the bill would permit up to 20 percent of the eligible mortgagors to be existing homeowners. In addition, individuals with a prior ownership interest in a residence which was certified by an appropriate State or local official as not meeting certain minimum standards with respect to sanitation, heating, major structural requirements, or overcrowding, or who had a prior ownership interest in a residence which no longer continues to be occupied on a permanent basis due to a natural disaster or governmental action, would also qualify for tax-exempt financing. S. 2425 would also increase the allowable purchase price of homes from 90 percent to 110 percent of the average area purchase price in nontargeted areas and would increase the allowable purchase price from 110 percent to 120 percent of the average

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area purchase price in targeted areas.

The increase in the purchase price limitation, in combination with allowing 20 percent of the mortgagors to be existing homeowners, would expand the mortgage bond program to higher income families. Based on current national average purchase prices, new homes selling for $74,700 ($91,300 in targeted areas) and existing homes selling for $70,500 ($86,200 in targeted areas) would qualify for tax-exempt financing. S. 2425 would increase the limits for new homes to $91,300 ($99,600 in targeted areas) and for existing homes to $86,100 ($93,000 in targeted areas). While the actual limits in a particular locality depend on the average purchase prices in that locality, the type of purchasers that would become eligible after this change clearly are individuals who have incomes sufficient to purchase higher priced homes and that are less in need of governmental assistance in financing their homes. Put simply, the liberalization of the eligibility requirements would significantly change the focus of the mortgage bond programs.

It has been argued that the eligibility criteria for mortgage subsidy bonds should be liberalized to increase the volume of tax-exempt housing bonds in the currently depressed housing market. While there may be several reasons for the relatively low volume of MRB's to date, the most significant reason is the high tax-exempt interest rate. This has reduced the demand for mortgages financed with housing bonds, even though such mortgages have interest rates lower than the conventional mortgage rate. The interest rates on 30-year tax-exempt mortgage revenue bonds since November 1981 have generally been above 13 percent and occasionally have been higher than 14 percent, which has meant that MRB programs could only offer mortgages at 14 or 15 percent. Mortgage rates of 14 or 15 percent are prohibitive for many first-time homebuyers and moderate income families.

However, despite the low volume of mortgage bonds to date, we do not believe it is necessary to change the focus of the housing bond program to insure that States will issue the maximum allowable volume of bonds. The most important factor that has inhibited the volume of bonds--the high interest rate--has been declining steadily since late April and is now in the area of 12.5 percent. We would thus expect to see a larger volume of MRB's to be issued now that the mortgage interest rate that can be offered is less than 13 percent. In this regard, over $700 million of single family MRB's were issued in April alone, when the tax-exempt interest rate on 30-year housing bonds declined below 13 percent for the first time since last November.

The improvement in the tax-exempt bond market in combination with the increase in allowable arbitrage in H.R. 4717, which is discussed below, should increase the

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utilization of tax-exempt single family MRB's. As tax-exempt interest rates continue to decline, we expect most States to issue close to their State volume ceilings in 1982 and 1983. If the eligibility criteria were expanded as proposed in S. 2425, housing bond proceeds would be used disproportionately for the newly eligible families since the newly eligible individuals would be better credit risks and would be better able to afford existing mortgage interest rates. An expansion of the eligibility criteria would, therefore, favor higher income homeowners at the expense of low and moderate income first-time homebuyers.

Arbitrage Restrictions

The bill would also amend the arbitrage restrictions in two ways. First, it would increase the allowable arbitrage limitation from one percentage point to one and one-quarter percentage points. Second, it would allow issuers not to reduce their reserves as their annual debt service fell, if such reduction required the issuer to sell a nonmortgage investment at a loss.

Treasury opposes the increase in the arbitrage limitation from one percentage point to one and one-quarter percentage points. Treasury has announced its support for an increase in the arbitrage limitation included in the Senate amendment to H.R. 4717, which is now in Conference. H.R. 4717 would increase the allowable arbitrage limitation to a range from one and one-sixteenth to one and one-eighth percentage points, depending upon the size of the bond issue. The increase in the arbitrage limitation in H.R. 4717 has been shown to cover all of the expenses, including administrative expenses, of the issuing authorities and would enable these programs to be self sufficient. But in any event, in our view, the payment of issuers' administrative expenses by State or local governments would be desirable to create an incentive for an efficient program and to insure that the housing subsidy satisfies a local public purpose. We therefore would consider an increase greater than the increase in H.R. 4717 to be excessive.

H.R. 4717 includes the same provision as S. 2425 relating to the sale of nonmortgage investments at a loss when the debt reserves are reduced. We have no objection to this change.

Registration Requirement

S. 2425 would eliminate the registration requirement on MRB's. Treasury opposes any change in the registration requirement. Treasury supports legislation in the Congress that would require generally all tax-exempt securities be issued in registered form. The registration requirement is needed to insure that bearer bonds are not used as a means of

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avoiding estate taxes or for laundering funds from illicit activities. The registration requirement for mortgage bonds should not result in any reduction in demand or higher yields for mortgage bonds when all securities are required to be issued in registered form. It also should be noted that the tax-exempt interest rate on registered mortgage bonds was not significantly higher than on comparable bearer bonds when the registration requirement became effective at the beginning of this year.

Extension of the Mortgage Revenue Bond Program

The bill would extend the MRB program from the end of 1983 through the end of 1985. Treasury does not believe that an extension of the MRB program is appropriate. By the end of 1983 we anticipate that mortgage interest rates and interest rates in the economy in general will have declined sufficiently so that such interest rate subsidies for owner-occupied housing will no longer be necessary. Tax-exempt MRB's are currently available through the end of 1983 and will provide assistance to the housing industry at a time when it is needed most.

Furthermore, tax-exempt revenue bonds generally are an undesirable method of providing governmental assistance for activities that merit such support. Tax-exempt financing is an inefficient subsidy mechanism since the revenue loss to the Federal Government significantly exceeds the interest cost savings to the intended beneficiaries of the subsidy. Tax-exempt bonds for single family housing and other private purposes also tend to increase the interest rate for all tax-exempt bonds, since additional investors must be attracted by higher yields to purchase more tax-exempt bonds. The competition for funds erodes the relative advantage of tax-exempt financing for all eligible activities, including essential public projects such as schools, roads, and sewers.

Provisions Relating to the Issuance of Multifamily Housing Bonds

In addition to imposing restrictions on the issuance of single family MRB's, the Act also imposed additional restrictions on the issuance of tax exempt bonds to provide multifamily housing. Unlike single family MRB's, multifamily housing bonds generally constitute industrial development bonds under the Code because the proceeds of the bond issue are used in the trade or business of the person owning the housing project. Although there are no State volume caps on the aggregate amount of multifamily housing bonds, and these provisions do not sunset in 1984, the Act did attempt to target part of the subsidy to low and moderate income renters.

Under the Act, interest on an industrial development

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bond, substantially all the proceeds of which are used to provide a qualifying project for residential rental property, is exempt from Federal income tax. Generally, a project is treated as qualifying under the requirements of this provision only if 20 percent or more of the units in the project (15 percent for a project in a targeted area) are to be occupied by individuals of low or moderate income. Generally, the term "low or moderate income" is determined by the Secretary in a manner consistent with the Leased Housing Program under Section 8 of the United States Housing Act of 1937. The statute contains a specific transitional rule for multifamily issues requiring that the period for which the 20 percent requirement must be met, for bonds issued before January 1, 1984, is 20 years. In addition, to qualify for tax exemption, the obligations must be issued in registered form.

S. 2425 would amend the targeting provisions of the Act by reducing the period of time during which the 20 percent requirement must be met to the greater of 10 years, one-half of the term of the obligations, or the term of any section 8 assistance contract, and by defining in the statute an "individual of low or moderate income" to mean an individual whose gross income is 80 percent or less than the local median gross income. The bill would also permit the Department of Housing and Urban Development to define a "low or moderate income individual" to include one whose income is above 80 percent of the local median gross income based on vague criteria such as "other factors prevailing in the area."

The provision of S. 2425 relating to the reduction of the period during which the 20-percent low income requirement must be met, and the definition of a low or moderate income individual as one whose gross income does not exceed 80 percent of the local median gross income, are identical to provisions of H.R. 4717 as passed by the Senate. To that extent, Treasury has no opposition to these provisions of S. 2425. However, Treasury opposes any provision of the bill which would redefine "a low or moderate income individual" to include one whose income exceeds 80 percent of the local median gross income. Such a change merely undercuts one of the major purposes for granting such obligations tax exemption in the first place, namely, to provide housing assistance for those who need it the most.

S. 2425 would also repeal the requirement that multifamily housing bonds be registered. We oppose this provision for the same reasons that we oppose a repeal of the registration requirements applicable to single family obligations.

I would be pleased to answer any questions you may have.

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Senator PACKWOOD. Mr. Secretary, before asking you a question or two, let me say to the audience that Secretary Chapoton comes almost every week or every 2 weeks to this subcommittee to testify on the pot pourri of bills that we have. And I ask him some of the same questions just to keep the record straight. And he answers the same way. But I just want it in the record.

Each time we have these hearings, one on the bill that Senator Heinz and I and others have introduced as S. 2424, one of the objections you state to it is using the Federal tax system for delivery of health care for social purposes, as you call it, and it circumvents the regular appropriations process.

That is not an objection the administration has, however, and it is not unique to this administration to a variety of uses of the tax code for social purposes they want to achieve. Is that not correct? From time to time the administration comes here with tax incentives and, in some cases, tax credits, to achieve certain purposes.

Mr. CHAPOTON. Well, I am going to have to think of examples. But I would concede there are instances where we deviate from the basic purpose of raising revenues.

Senator PACKWOOD. Second——

Senator HEINZ. Mr. Chairman, you would not be referring to the tuition tax credit proposal that the President made in Illinois just a few weeks ago, were you?

Senator PACKWOOD. I was not going to mention any specifics.

Senator HEINZ. And, of course, Mr. Chapoton would not be forgetting that either.

Senator PACKWOOD. We have not seen the bill yet.

Mr. CHAPOTON. You have not seen the bill yet, but the President has announced a tuition tax credit proposal.

Senator HEINZ. And that is for social purposes. Let us put it this way: It is not a revenue-raising proposal.

Mr. CHAPOTON. No, it is not.

Senator HEINZ. Thank you, Mr. Chairman, for yielding.

Senator PACKWOOD. Let me ask you further, Mr. Secretary, if we are going to encourage things, if the U.S. Government is going to encourage things beyond the marketplace, is there any way to achieve it other than, one, using the Tax Code and the incentives in the Tax Code to do it; or, two, the normal taxation budget appropriation and Government-administered program, are there any other alternatives to those two?

Mr. CHAPOTON. I think that is generally right. Those are among the primary ways Government influences the movement of private capital.

Senator PACKWOOD. And is there any question but that the Federal Government is now in terms of hospital care and nursing home care heavily involved in expenditures?

Mr. CHAPOTON. It is heavily involved.

Senator PACKWOOD. And getting more heavily involved in expenditures, even under the President's program, even under all the so-called tax cuts—I mean spending cuts. We are not cutting back on health care: The costs are going up.

Mr. CHAPOTON. Well, of course, as you know, Mr. Chairman, that is a major concern. But there is no question the costs are going up,

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and going up faster than inflation. And that is something that must be addressed.

Senator PACKWOOD. Now, is there any serious question in your mind or within the administration's mind that if we can find a rational way to do it, home health care is cheaper than hospitalization or nursing homes?

Mr. CHAPOTON. As you know, that is out of the area of my jurisdiction, but I think there is general agreement, as you mentioned earlier, that home care can be provided more cheaply.

Senator PACKWOOD. So then the issue comes—and this is aimed at the elderly; we have other programs, medicaid, that is aimed across the board regardless of age—so the issue becomes then this: If, one, we are going to try to provide adequate health care for the elderly; two, we have already got a tremendous Federal expense; three, generally properly managed home health care would be less expensive than nursing home care, certainly less expensive than hospital care.

The question becomes do we want to try to do it through the normal taxation appropriation budget process and the management of a plan and paid for by the Government, or do we want to tilt or try to use the Tax Code in doing it?

Mr. CHAPOTON. I think that is the question. I know you are familiar with the question of the efficiency of doing it through the Tax Code, and the question of whether the benefits flow where you want them to, and the related questions that we talk about all the time.

Senator PACKWOOD. Well, again, so we can have it in the record. Use the example of housing. We tilt toward housing with the use of the mortgage interest deduction. We think that housing is good social policy. We think that people ought to own homes, and we allow them to take the interest deduction off their income tax.

The alternative, if we did not do that, and we still want to encourage housing, the alternative would be to have a nationwide massive housing program, probably administered through the Department of Housing and Urban Development. And if you wanted to buy a house, you would go to the Department of Housing and Urban Development and you would apply for a grant, I assume, and fill out forms. And before you got the grant, they would make sure you had enough toilets per square foot and you met all the standards and everything. And then you might or might not get the grant.

That would be the alternative if we wanted to have a Federal encouragement of housing and we did not use the tax system. I do not know of any people that argue seriously that that would be a more efficient way of delivering housing in this country than the mortgage interest deduction.

And I would simply argue that I think in terms of health care for the aged, a more efficient way of doing it—I understand you miss on your targets on occasion—but a more efficient way of doing it is the use of tax incentives through the tax system than the hodge-podge way that we go about it.

And I realize that we cannot reach everybody with the tax system. And I am convinced that for the bulk of the people in this country that we can do more through the tax code efficiently than

we can do through Government programs efficiently. Or put the other way around, I have not heard many people testify before this committee that federally managed health care programs, federally paid for health care programs, are models of efficiency.

Mr. CHAPOTON. I think that is right. I think one of the concerns, though, is the restrictions in existing Government medical care programs that were mentioned earlier that in effect require institutional care in order to receive benefits. And those certainly can be looked at.

And, of course, many people are going to support their aged relatives; hopefully most will support their aged relatives with or without a credit. And I think that you raised the question of whether you want to create such a benefit.

Senator PACKWOOD. That is a fair question. I will close with this. The only thing I want the record to show again—and this is not unique to the Republican treasury department, it is endemic to all treasury departments. They basically have a feeling that we should only use the tax code for the collection of money, period. And that does not change.

It does not matter if it is President Reagan is President or President Carter or President Ford—that is what they say—except for all of the programs that all of the executive branches want, Republican or Democrat, and for which they decide to use the tax code. And then they simply have a different argument than for the things that we want to use the tax code for.

Senator Roth.

Senator ROTH. First, Mr. Chairman, I would like to thank you for holding these hearings today. There are a number of bills, as you know, that are of special interest to me, and I appreciate the opportunity of having them considered.

I do have an opening statement that I would request be included in the record as if read.

Senator PACKWOOD. It will be included at the start of the hearings.

Senator ROTH. Mr. Chairman, I would like to make just two or three comments and then ask my good friend two or three questions.

Frankly, in a way, you stole my line, because it seemed to me administrations come and go, but bureaucracy lives forever. They give you the same answers. And these particular bills that I am concerned about essentially deal with the question of equity.

Just let me point out that the legislation that was adopted in 1971 for the purpose of providing that the investment tax credit would apply to single-purpose agricultural structures has been consistently obstructed by the administration of the IRS. And in all candor, it makes no difference, no difference, what administration is in power.

Initially, the IRS refused to have it apply to broiler houses when the record was perfectly clear that was a principal purpose of it. So after many years of wrangling with the bureaucracy, we finally got some legislation that we thought had bipartisan support. Herman Talmadge was working on the other side. We thought we corrected that and made it retroactive so that those who were denied the investment tax credit had the opportunity to take advantage of it.

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This legislation was adopted and passed. Now all of a sudden, we find a new objection being interposed: The statute of limitations.

Mr. Chairman, there is something missing here. The purpose of an administration is to be fair and equitable.

Senator PACKWOOD. Let me interrupt you a minute, if I can. We have got a vote, and I would like to be able to run these hearings continuously if we can. Do either one of you want to go and vote first and then come back?

Senator HEINZ. I will.

Senator PACKWOOD. And then I will go vote when you get back.

Senator ROTH. And what we are really saying is that the administration is denying equity to those who did not apply for a tax refund in the early 1970's, that the relief that was the clear intent of Congress will not be given to them. The IRS has raised all sorts of objections of one sort or another.

And I must confess, Mr. Secretary, it outrages me. It is not fair. It is not equitable. And it is no wonder that the people back home wonder about Government and how it administers the law.

The second piece of legislation I am interested in involves U.S. savings bonds and at least in this area, Mr. Secretary, we seem to be working closer together. Here, all we are trying to do is to give the small investor a somewhat comparable opportunity to the fellow or person who has more money to put aside and put in savings. It is long overdue. And I am hopeful that we can act on this very quickly.

The third one that I would like to mention involves the mortgage revenue bond program. It does seem to me, for some of the reasons that our chairman was mentioning, that if you want to spark some life into the housing industry, you can by making these tax-free mortgage bonds workable, viable. My housing people at home tell me it is the quickest way to revitalize that industry without going the route that some other people are proposing, of expensive, costly, administratively difficult legislation.

So I would hope that you, who are in a position of leadership, would give some thought to try to work it out so that this whole program becomes viable and we put some life into the housing industry.

Well, having said all that, Mr. Chairman, I would then just like to ask two questions, if I may. First of all, on the savings bonds, you have stated Treasury has its own savings bond proposal. As you know, the bill I introduced with my good friend Toby Roth on the House side, is based upon the Treasury initiative. I understand the Treasury proposal differs from mine in that it would peg the bonds' interest rate to 85 percent of the average rate of 5 year and Treasury securities in that it establishes an interest rate floor for investors.

It is my understanding that these are the principal differences between the two bills. Is that correct?

Mr. CHAPOTON. Senator Roth, I have only a passing knowledge of that. But in discussing it yesterday, I believe that those are the two differences. As you know, Assistant Secretary Mehle will be up next week, I believe, to testify on that.

Senator ROTH. Well, just let me say that we are certainly prepared to work out any differences. I think it is critically important

that we get this legislation enacted soon, in fairness to the small investor. And I would urge you to see if we could not work out these details.

Mr. CHAPOTON. We agree, Senator.

Senator ROTH. My other request is that you go back and take another look at the whole area of investment tax credits for single purpose agricultural structures. It should not be necessary to have new legislation, but if necessary, we will pursue it actively. It just seems to me that those who comply with the law, who are small broiler raisers, whatever their line of endeavor is, should not be penalized because they did not go ahead and litigate several years ago. I just think that is setting the wrong precedent.

Mr. CHAPOTON. Well, Senator, I understand your concern, and I know you will appreciate our concern about opening up closed years as well. I mean we both, I know, understand our respective positions. The 1978 legislation did attempt to clarify existing law, as I stated. There are just any number of cases where that occurs.

And there are going to be hardships. I would concede that immediately. I do not know of any in this area, but there are in other areas where the statute of limitations simply draws the curtain on a tax year.

Now, when we have legislation that settles a matter, it is just dangerous to go back and start trying to adjust the situations that may appeal to one's sympathy, because there are always going to be some cases that are going to be difficult to handle.

In 1981, we agreed to make it clear that for the future years the favorable ACRS deduction would apply to such structures. But we just feel you cannot go back and open up years for taxpayers any more than they would be opened up if the taxpayer litigated the issue and won. Other taxpayers do not have the benefit of that determination that the law was indeed not as the IRS determined.

Senator ROTH. Well, Mr. Secretary, you know, we are dealing with people. The problem in Washington, we look at the big policy picture, but I think that the ultimate goal of government has to be equity and fairness. And in my judgment, there is just no rhyme or reason to penalize usually the little people who cannot afford the expense of litgating and trying to assert their rights. And what we are saying, well, we are sorry, it is too bad, but that is the way Government is. And that is the reason Government today does not have the confidence of the small people.

I would urge you, even though it might cause some expense, we would get rid of a lot of the paperwork and save money that way. But I think a primary purpose of Government is to be fair and fair to everyone, especially those least able to help themselves. And what we are doing under this kind of an approach is penalizing the very people who have complied with the law, been very fair, and then suddenly those who complain get relief and the others do not.

I think it is the wrong approach. It is the wrong precedent. And it makes no sense dollarwise.

Thank you, Mr. Secretary.

Mr. CHAPOTON. Thank you, Senator.

Senator PACKWOOD. Mr. Secretary, could you wait just a moment, because I know Senator Heinz has some questions for you, and he is on his way back now. If I do not run now, I am going to miss the

vote. As I am on your side of this vote, I do not want to miss it, and it is a close vote. He will be back in just a couple of minutes. He is on his way now.

[Brief recess.]

Senator HEINZ [presiding]. In the absence of Senator Packwood, first I want to make a few brief remarks for the record. I will put my entire statement in the record.

I want to address the family tax credit for elderly home health care, S. 2424, Mr. Chapoton, about which you commented. I want to say that we do have a number of members of the Senate Finance Committee very interested in this bill.

It has one very simple goal, which is to improve incentives in our health care system to encourage less expensive and more appropriate levels of care than institutionalization and to support families in their efforts to maintain the independence of their elderly family members.

You have described, and I think we all understand what that legislation technically involves. I would just like to indicate that we are all indebted to Senator Jepsen, the distinguished Senator from Iowa, for a bill he introduced earlier this year, S. 1581, which parallels S. 2424. His bill stimulated a good deal of our thinking on this matter.

While there are some substantial differences, our goals are very much the same I think it needs to be pointed out that the tax credit in S. 2424 builds on the changes that were made in the dependent care tax credit as part of the Economic Recovery Act of 1981. It is my understanding the administration did not oppose those changes, and the President signed that bill into law.

So what we are trying to accomplish in S. 2424, and what is the primary difference from the dependent care tax credit is to help families prevent the total dependence of an older relative with functional impairments. S. 2424 uses a sliding scale in much the same way as the dependent care credit. And we believe that to be a fair and equitable scale.

I want to note also a recent series of articles in the Washington Post which described the boom in the nursing home industry in our country at a cost of some $24.5 billion last year, over half of which were medicare and medicaid dollars. And that boom is due to many factors, not the least of which is the institutional bias in our public programs.

The credits provided for in S. 2424 and, for that matter, S. 1581, represent a vital step toward reversing the institutional biases in the system. And it provides a humane alternative for senior citizens as well.

Finally, I would like to address several questions to you, Mr. Chapoton, but first I do want to comment about the budgetary implications of this bill. Obviously, a tax credit has a revenue loss associated with it. But it is my understanding you do not have any specific revenue estimates today.

Mr. CHAPOTON. No, not today. We will have next week, Senator.

[The following was subsequently supplied:]

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

JUN 23 1982

Dear Mr. Chairman:

As you requested, we enclose for the record the Treasury Department's revenue estimates for S. 2424, relating to the Income Tax Credit for Certain Home Health Services for elderly taxpayers. Please excuse the delay in providing this data.

The enclosed revenue estimates include only the static revenue loss resulting from enactment of the credit. We made several inquiries to the Department of Health and Human Services with respect to the possibility of cost savings in the Medicare and Medicaid programs if the credit were enacted. Although HHS did not make an estimate of the cost savings, the consensus of the HHS staff was that the savings in Medicare/Medicaid and related services would be negligible. This opinion was shared by the outside health care contractors with whom we spoke.

Several reasons were given for their conclusion. First, the credit is not targeted to persons who have a high risk of imminent nursing home care. The bulk of the credit will be claimed by persons who would not, in the absence of the credit, be receiving nursing home care. Second, persons who are about to enter nursing homes generally require considerable daily care for an extended period, which, if provided at home (in the form of special nursing care, etc.) is extremely costly, even after the tax credit. Thus, the credit will not prevent institutionalization of these persons in a significant number of instances where public benefits that pay for institutional care are available. Finally, persons currently eligible for home health care benefits under Medicare/Medicaid, Title XX Social Services, or other programs will have no incentive to leave these programs if the credit is enacted.

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Please feel free to have someone on your staff call either Andrew Furer of the Office of Tax Legislative Counsel (566-2927) or Sonia Conly of the Office of Tax Analysis (566-4484) if you have any questions or if you require further information regarding S. 2424.

Sincerely,

/s/ John E. Chapoton

John E. Chapoton
Assistant Secretary
(Tax Policy)

The Honorable
Bob Packwood
Chairman, Subcommittee on Taxation
and Debt Management
Washington, D.C. 20510

Enclosure

Revenue Effect S. 2424
Income Tax Credit for Certain Home Health Services
Provided to Qualified Persons by Taxpayer 1/

($ millions)

| | Years | | | | |
|---|---|---|---|---|---|
| | 1983 | 1984 | 1985 | 1986 | 1987 |
| Calendar year liability ..... | -309 | -401 | -531 | -570 | -611 |
| Fiscal year revenue ..... | -31 | -318 | -414 | -535 | -574 |

Office of the Secretary of the Treasury
Office of Tax Analysis

June 14, 1982

1/ Qualified persons age 75 or older or have Alzheimer's disease. Qualified persons must have AGI of $15,000 or less. Taxpayers must be related to qualified person and have AGI of $50,000 or less. Credit is based on taxpayers' income and is reduced from maximum of 30 percent to 20 percent for AGI of $30,000-$50,000.

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Senator HEINZ. I would hope that when you get those revenue estimates that you will take into account not just the static revenue loss that any tax credit necessarily involves, but your estimate of savings from less utilization of other alternatives currently available through medicare and medicaid.

Senator Packwood did a very good job of taking you through the logic behind this bill, and I will not go through the same exercise. But fundamentally, in your testimony you argued that certain groups of people should not be singled out with this tax credit because they are taken into consideration in other programs.

Now, I assume by that you meant medicare and medicaid. Is that correct?

Mr. CHAPOTON. That is correct.

Senator HEINZ. Could you tell the committee what percentage of each of those programs roughly, medicare and medicaid, goes to nonacute, noninstitutional home care services for the chronically ill elderly?

Mr. CHAPOTON. You say noninstitutional?

Senator HEINZ. Noninstitutional home health care services.

Mr. CHAPOTON. A very low percentage, Senator, but I do not have any specific figure.

Senator HEINZ. Do you have a guess?

Mr. CHAPOTON. I am not sure that there is any noninstitutional care permitted, but I just do not know, Senator.

Senator HEINZ. There are some home health care services permitted. Expenditures for those services represent 1 to 2 percent, somewhere less than 2, perhaps as much as 1, of all medicaid payments; that is, the Federal-State program for the indigent. And they represent two-thirds of 1 percent for medicare—two-thirds of 1 percent for medicare.

So we are spending an infinitesimal fraction on alternatives to institutionalization, on support for home health care, on keeping our frail elderly, our chronically ill elderly, those that might have diabetes, those that might have arthritis, those that might have suffered a stroke, those that might be suffering somewhat from senile dementia, out from institutions. At the same time as we have a medicare program that will pay hundreds of dollars a day to institutionalize that person for up to 90 days; and under medicaid, a program that will pay a very substantial sum of money each day for nursing home care.

It seems to me that the issue is how can we deliver the kind of health care most efficiently that older people need? I know you did respond to Senator Packwood on that. Do you have any comments on why we should not use the tax code?

Is there something wrong with using the tax code if we can establish it as a means of delivering health care services more efficiently? Is there something inherently wrong with that?

Mr. CHAPOTON. Well, let me first state that I think we would all agree that encouraging home health care is desirable. We have seen the figures, and I think those Post articles were very interesting regarding the cost to the Federal Government. And it is very tempting to try to provide benefits such as this to try to influence conduct through the tax code.

But we have to recognize that we really do not know the effect of this proposal. We can determine on a static basis an estimate of the revenue cost. The next step, which is key, as you mentioned, is how much we are saving at the other end. That would involve a lot of assumptions that we, at least in the Treasury Department, simply could not make. The savings would depend upon how much pressure was taken off health-care institutions. I think that would be very difficult to determine. But certainly, such savings are a desirable goal.

Senator HEINZ. Mr. Chapoton, would you agree, that the question of how much we save by giving people an effective incentive to stay out of institutions for which the Federal Government pays is nonetheless a very relevant determination for us to make, even if the Treasury Department may not have all of the information it needs to make it?

Mr. CHAPOTON. Certainly. As I said, I think that is key. Otherwise, the proposal really does not stand up.

Senator HEINZ. So you do not object to other people making those calculations? You think they should be made and that we should evaluate them objectively?

Mr. CHAPOTON. Absolutely. I would think that people would assume that the savings would almost offset, maybe more than offset, the costs. I understand that there are other benefits from noninstitutional care of elderly people.

The problem, though, is when we do any of these things through the tax system—I will not limit my comments to this proposal—that we do them in an imperfect way. We provide benefits where we would not privide benefits if we were delivering them directly. And we have administrative problems involving whether the expenses are legitimate expenses. And then we come to the point of dealing with taxpayers who have no tax liability, and the pressure becomes very strong to make the benefit refundable, which is done in this legislation. This creates a new set of problems and a new set of precedents, frankly.

Senator HEINZ. Now, Senator Packwood and you and I briefly discussed whether or not it was legitimate for the tax code to be used for a social purpose. Clearly, as Senator Packwood pointed out, it just depends upon which department, which President, wants to use it for which social purpose. It seems to me we have crossed that bridge with the President's proposal for a tuition tax credit. Would you not agree?

Mr. CHAPOTON. Well, as I mentioned earlier, it is not a revenue-raising measure. It is a much more direct expenditure, and we were very careful to limit the type of expenses that would qualify: no books, no travel, that type of thing. In addition, as you know, it is not refundable.

Senator HEINZ. Without prejudicing in any way the tuition tax credit, I think one would probably agree that the tuition tax credit has no known revenue offset.

Mr. CHAPOTON. Well, there is no revenue offset that I know of, I would agree.

Senator HEINZ. Whereas this has a potential cost offset, does it not?

Mr. CHAPOTON. I would agree, this has a potential cost offset. That is right.

Senator HEINZ. You are quite correct.

Now, my last point is that you have objected to the refundability of this tax credit. And there is a very straightforward reason it is refundable: many of the people who need the help the most are so poor or have such modest incomes that a nonrefundable tax credit will be of limited value to them.

So it becomes really a matter of equity for people at the lower end of the income scale who are struggling hardest in our society.

Now, we have tax credits like investment tax credits, which I strongly have supported for businesses that make investments. And indeed, those businesses that have large tax bills can take an investment tax credit and reduce their tax bills right down to nothing. IBM can do it. General Motors, if they were making any money this year could do it. The biggest corporations can do it.

Similarly, many individuals can claim, if they are wealthy enough, a tax credit for depreciation; tax credits—I did not happen to vote for this—but they can make deductions on per diem expenses here in Washington, D.C. All kinds of credits and deductions that would do you some good if you had enough income, taxable income, for them to apply.

But clearly, the people that we have in mind here, are people at the lower end of the income scale, who might have $6000, $7000 in income.

Do you care to comment on how else we could address the equity issue here, the fairness issue?

Mr. CHAPOTON. As I stated earlier, as soon as you decide to provide this kind of benefit through the tax system, you immediately run into the problem you are addressing, which is, in this case and in many cases, that you are trying to direct the benefit to the class of people who do not have tax liability, and therefore you cannot use the tax system unless the benefit is refundable.

But we have to recognize refundability does cause obvious administrative problems. It does make the tax system into something quite apart from a revenue-raising system. It is one thing to reduce someone's burden under the Federal tax system, but it is another step conceptually and administratively to make the tax system program of passing out benefits as well.

Senator HEINZ. Mr. Chapoton, thank you. You have answered all my questions. And although you did not endorse the legislation, I think you made a very strong case for it. [Laughter.]

Senator PACKWOOD [presiding]. Senator Roth, any further questions?

Senator ROTH. No, thank you.

Senator PACKWOOD. Thank you very much.

Next let us move on to a panel on S. 2424, and that will be: Ms. Martha Fenchak, Mr. Richard Wilson, and Monsignor Charles Fahey.

Let me urge you to speak into the microphones. The sound system in this room is not all that great, and the microphones are not multidirectional. Unless you speak right into them, the people in back cannot hear you.

I think we will take Mr. Wilson first.

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Senator HEINZ. Mr. Chairman, before you start, I have another committee I have to go to this morning. I would like to say we are very pleased to have Ms. Martha Fenchak, who is from Pittsburgh, here this morning.

Martha Fenchak is the founder of the Chronic Organic Brain Syndrome Society. Her efforts in this area have been tremendous. We are very proud that she is a Pittsburgher, even if we keep wondering how our baseball team is going to live up to her high standards of performance. She represents hundreds of families who have and are caring for chronically ill elderly relatives, as our bill is designed to help.

She is here with several other very distinguished panel members. I welcome Monsignor Fahey, who is well known for his remarkable work in the area of long-term care.

And Mr. Wilson of the Oregon Council of Seniors. I wonder how he happens to be on this panel? In addition to his excellent work, I think he represents an excellent State operation.

And I am glad to have all three of them here, Mr. Chairman.

Senator PACKWOOD. Mr. Wilson is here in the dual capacity of the senior intern program, and this is the week the senior interns are here. There are three from Oregon, and Mr. Wilson is one. And he was picked by a peer group. We used some of our past interns. We had 60 applicants this year, and Mr. Wilson was one of the three they picked.

Mr. Wilson, go right ahead.

## STATEMENT OF RICHARD WILSON, EXECUTIVE DIRECTOR, OREGON STATE COUNCIL FOR SENIORS

Mr. WILSON. Thank you, Senator.

And thank you, Senator Heinz, for your good thoughts.

Mr. Chairman, my name is Richard Wilson, and I am from Salem, Oreg. I am here today as the executive director of the Oregon State Council for Senior Citizens. The Oregon Council represents over 5,000 vocal seniors in Oregon and is affiliated with the National Council of Senior Citizens here in Washington, D.C.

Mr. Chairman, I am very proud to be here today to present testimony regarding S. 2424, the Packwood-Heinz legislation that is designed to encourage families to help pay for the health care expenses of their parents who are ages 75 and older. I think this legislation goes a long way in helping seniors remain as independent as possible, and further demonstrates to us in Oregon your continuing interest in issues that affect seniors.

Mr. Chairman, I think your legislation takes an important step forward by stating that only families with parents aged 75 and over would be eligible for a tax credit, because it is at age 75 when many seniors begin to need more medical assistance as well as other services like home health care. Your bill encourages the family to help parents—and rewards them for doing so.

It seems to me, Mr. Chairman, that this bill is as important a step as your long-term care bill, S. 861. That legislation would enable thousands of seniors who are now in jeopardy of being placed into a nursing home to avoid such institutional care, and instead remain in their homes and remain independent.

In-home services such as those that you have proposed in the Packwood-Bradley-Heinz long-term care bill, combined with the tax credit for families caring for very old seniors, are probably the two most important pieces of legislation before the Congress today.

Mr. Chairman, passage of these two bills would ultimately help millions of seniors across the United States. In fact, Mr. Chairman, if you would allow me, I would like to take this opportunity to thank you, on behalf of all the members of the Oregon State Council for Seniors, for your efforts in trying to make programs for seniors as effective as possible. We salute you for your efforts and wish to take this brief opportunity to thank you.

Finally, Mr. Chairman, I can only hope that you will do everything possible to make sure that legislation like the bill that you have introduced with Senator Heinz is enacted. There are many families in Oregon, many young families, that are often forced to place their parents in nursing homes—because either services are not available to them to help keep them in their home, or because they have not got the financial resources available to them to help their parents remain independent.

Something must be done to correct these kinds of problems. We must keep every senior who does not need to be in a nursing home out, unless they absolutely have to be there.

The legislation which you have introduced goes a long way to help insure that and to achieve the kind of goal which all seniors believe in—that is, remaining fully independent and leading as productive life as possible in one's later years.

Again, thank you for the chance to testify before your committee, and thank you for being a friend to all seniors in Oregon.

[The prepared statement of Richard Wilson follows:]

PREPARED STATEMENT OF RICHARD WILSON

Mr. Chairman, my name is Richard Wilson, and I'm from Salem, Oregon. I am here today as the executive director of the Oregon State Council for Seniors.

The Oregon Council represents over five thousand vocal seniors in Oregon and is affiliated with the National Council of Senior Citizens here in Washington, D.C.

Mr. Chairman, I am very proud to be here today to present testimony regarding S. 2424, the Packwood-Heinz legislation that is designed to encourage familes to help pay for the health care expenses of their parents, who are ages 75 and older.

I think this legislation goes a long way in helping seniors remain as independent as possible, and further demonstrates to us in Oregon your continuing interest in issues that affect seniors.

Mr. Chairman, I think your legislation takes an important step forward by stating that only families with parents aged 75 and over would be eligible for a tax credit, because it is at age 75 when many seniors begin to need more medical assistance as well as other services like home health care. Your bill encourages the family to help their parents—and rewards them for doing so.

It seems to me, Mr. Chairman, that this bill is as important a step as your long-term care bill, S. 861. That legislation would enable thousands of seniors who are now in jeopardy of being placed into a nursing home to avoid such institutional care, and instead remain in their homes and remain independent. In-home services such as those that you have proposed in the Packwood-Bradley-Heinz long-term care bill, combined with the tax credit for families caring for the very old seniors, are probably the two most important pieces of legislation before the Congress today. Mr. Chairman, passage of these two bills, would ultimately help millions of seniors across the United States.

In fact, Mr. Chairman, if you would allow me I would like to take this opportunity to thank you, on behalf of all the members of the Oregon State Council for Seniors, for your efforts in trying to make programs for seniors as effective as possible. We salute you for your efforts, and wish to take this brief opportunity to thank you.

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Finally, Mr. Chairman, I can only hope that you will do everything possible to make sure that legislation like the bill that you have introduced with Senator Heinz is enacted. There are many families in Oregon, many young families, that are often forced to place their parents in nursing homes—because either services are not available to them to help keep them in their home, or because they haven't got the financial resources available to them to help their parents remain independent.

Something must be done to correct these kinds of problems. We must keep every senior who does not need to be in a nursing home out, unless they absolutely have to be there—absolutely have to be there.

The legislation which you have introduced goes a long way to help ensure that, and to achieve the kind of goal which all seniors believe in—that is, remaining fully independent and leading as productive a life as possible in one's later years.

Senator PACKWOOD. Mr. Wilson, you are very complimentary, and I appreciate it.

I am convinced this legislation and the home health care bill we introduced earlier not only is good social legislation, but it makes good financial sense. I referred earlier to some testimony we have had on home health care legislation where we have had some pilot projects around the Nation, and the evidence is just overwhelming: it does save money.

The one argument that is raised against it, apart from the one that the Secretary raised about using the tax code for social purposes, which we do so often, to argue that we should not do it is arguing in the face of a history of using the tax code for that purpose.

The argument that is raised against it is that you have no idea how many people may take advantage of the home health care or this bill that now are getting no services at all or no money spent by the Federal Government, and you cannot say it is a cost-saving device because you do not know how many additional millions of people may be covered or use it that do not use it now.

I understand the validity, the possible validity, of that argument. And anyone who has been in this Congress longer than I have, who was here when the medicare argument was raised, was burned because we underestimated the cost of medicare. We had no concept of how many additional people would use it.

Having said all of that, I have yet to have anyone present any evidence either on the present bill or the home health care bill we introduced, present any evidence that it does not save money. And I have heard no one say that it is not good social policy.

Ms. Fenchak.

## STATEMENT OF MARTHA A. FENCHAK, FOUNDER AND PRESIDENT, CHRONIC ORGANIC BRAIN SYNDROME SOCIETY OF PENNSYLVANIA

Ms. FENCHAK. Thank you, Mr. Chairman. I would like to thank the Senate Finance Committee and the Taxation Subcommittee for the opportunity to testify on behalf of millions of families confronted with the care of a loved one in the home and their need for financial assistance in providing this care.

As a family member caring for my mother and now my father, I can personally attest to the enormous physical, emotional, and financial responsibility in caring for an aged parent. I have helped my father care for my mother since she was diagnosed in 1973 as

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suffering from presenile dementia. It is more commonly known today as Alzheimer's disease.

Indeed, as founder and president of the Chronic Organic Brain Syndrome Society of Pennsylvania, a statewide nonprofit health organization, and as cofounder and first vice president of the National Alzheimer's Disease & Related Disorders Association, I represent 3 million Americans and their families confronted with this devastating disease process.

Senator PACKWOOD. Let me interrupt you just a second, if I might. Fortunately, you were all very good about getting your statements in. I have read all of the statements, and we are going to have to hold witnesses to 5 minutes because we have some additional bills coming on, and with voting, we are going to have to adjourn this committee from time to time. Your entire statement will be in the record.

Ms. FENCHAK. Thank you.

Because of these individuals who cannot appear today before this committee, the things that I want to point out that have occurred in our own family situation are, I believe, representative of the families and what they are confronting right now throughout this country.

As indicated, since 1973, when my father and I began caring for my mother, there was nothing in the form of third-party insurance coverage, medicare, or medicaid reimbursement, that we as a middle-income family could look to for the home care services that we needed to keep her out of an institution.

We did this on a limited income and the resources that we had. As a middle-income family my parents earned approximately $1,100 a month together with a pension and social security. I am a schoolteacher and was able to help reimburse their care with my income.

They had approximately $60,000 worth of equity in their home and about $40,000 in savings. Today, gentlemen, that is all gone. In order to pay for an outstanding obligation, I used the last amount of money, their burial insurance, to pay for an outstanding debt.

We were able to keep her home until last July, at the cost of approximately $600 a month, with things such as a bike restorator to help her walk, commonly referred to as a bike, which is not being paid for by medicare as being considered a luxury item, things such as bandages, gauze, and supplies in order to help her because she could no longer move. She is in a fetal position without the ability to feed herself, to walk, talk, or to even turn from side to side.

All of these items are considered nonreimbursable and luxury items because of the home care situation. With these factors in mind, the cost of my mother's care has financially destroyed our family, and we were a middle-income family.

One of the points that I want to make is that with my mother in a hospital situation since last July and in a nursing home situation for 2 months out of the total year, we are told by both the hospital and the nursing home that the cost of her stay is too much for them even at this point in time.

The point that I am trying to make with this entire presentation is that with the use of tax credits, the cost for families to keep a person at home can be something that is affordable because fami-

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lies can then use the amounts of money that we are talking about, say, the $85 a month, to purchase some of the items that I mentioned in my testimony, or to provide some respite so that the families can, in turn, have a little bit of an opportunity to replenish their own energies and resources.

I have heard this morning the objection on the Government's part that this will cost a lot of money. I can indicate, if I may quote some statistics, that right now, without tax credits, we are talking about national health care costs being in 1950 $12 billion, in 1978 $212 billion, and by 1990, $750 billion.

So we are talking about the health care costs being that of three-fourths of the total national debt today.

The other point that I would like to make, and it is a question that I would like to raise, is that, of the people that will be admitted into nursing homes this year, up to 80 percent of these individuals will suffer from senile dementia of the Alzheimer's Disease type.

Most families cannot pay for nursing home care for more than a year. That means that after that year's time they will be on medicare, perhaps for 90 days, and then on medicaid. What is that going to cost our Government a year from today?

Thank you.

[The statement follows:]

TESTIMONY OF

MARTHA A. PENCHAR

I would like to thank the Senate Finance Committee for the opportunity to testify on behalf of millions of families confronted with the care of a loved one in the home and their need for financial assistance in providing this care.

As a family member caring for my mother, and now my father, I can personally attest to the enormous physical, emotional, and financial responsibility for caring for an aged parent. I have helped my father care for my mother since she was diagnosed in 1973 as suffering from presenile dementia - more commonly referred to today as Alzheimer's Disease.

As Founder and President of the Chronic Organic Brain Syndrome Society of Pennsylvania, a state-wide non-profit health organization dedicated to improving the lives of individuals suffering from dementia, and the families of these victims, and also as co-founder and First Vice-President of the national Alzheimer's Disease & Related Disorders Association, I represent three million Americans and their families confronted with this devastating disease process.

Alzheimer's Disease and the other types of senile dementia comprise the fourth leading cause of death in this country. This disease process is a chronic, long-term, irreversible condition which begins with memory loss and progresses over a period of time - up to ten years or longer - to the total intellectual and physical incapacity of the patient. The victim becomes unable to plan, make decisions, communicate, recognize loved ones, eat, or swallow. Ultimately, the patient becomes incontinent of bladder and bowel, and is unable to move his limbs. Unless another illness mercifully intervenes, the person dies in a vegetative state.



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My 72 year old mother is presently in such a condition. She languishes in a hospital bed, lying in a fetal position, fed nourishment through a nasal feeding tube, unable to voluntarily move her extremities. She has been unable to speak a word since she wished us "Merry Christmas" in 1980. Her condition is such that care in a nursing home is presently impossible to obtain. The hospital is charging us about $500.00 per day to keep her.

We are a proud and patriotic family. Both of my parents worked and contributed to our country. Because they lived through the great Depression, my parents were very conscious of saving. At the time my mother became sick, when she was 63 and my dad was 65, they had an estate consisting of a $60,000 house, over $40,000 in savings, and a combines retirement income of $1,100 per month. Today, Senators, it is all gone. Last week I had to withdraw my parents' $4,000 burial fund to pay off an outstanding obligation for my mother's care.

My father and I kept my mother at home from the time of her diagnosis in 1973 until July 20, 1981, when she was hospitalized for critical care. Virtually all of the home care costs for my mother were assumed by my father and by myself as their only child. We were minimally reimbursed by Medicare and other third party insurers for a few items necessary for her care. Generally, therapies, devices, and supplies necessary for her care were not reimbursed. These things were necessary to keep her ambulatory and to maintain her daily living skills. A few examples are:

1. - A bike restorator which cost $300 to help my mother maintain ambulation so that she could remember how to walk. Medicare deemed this to be a luxury item.

2. - A water mattress which cost $425, necessary to help



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the care of the decubitus ulcers my mother incurred when she became bedridden, and to prevent the onset of additional bedsores. Medicare considered this to be a luxury item.

3. - Linens and pads used for a patient who is incontinent. These items help keep a patient socially active and prevents or delays the use of a catheter. The use of a catheter can cause urinary tract infections. These linens and pads were not reimbursed.

4. - A high protein/ high nitrogen feeding supplement necessary to provide proper nourishment, aid physical stamina, and help in healing decubitus ulcers. Not fully reimbursed outside of the hospital setting.

With my background in nursing and my degrees in education, I personally provided stimulation and therapy for my mother in a number of ways: through music and art; working with communication skills; recreational and exercise activities such as dance and gardening; entertainment such as dining out at family restaurants and movies. However, the physical and emotional strain of caring for my mother caused me to suffer a chronic back problem and aggravated my father's hernia, necessitating his fifth hernia operation. My father now suffers from arthritis and a detached retina. Because of the total drain of his finances, he now suffers severe emotional problems.

A nurse's aide companion had to be hired for my mother while she was at home; she now has to care for my father. She charges $600 per month. Both my father and I have engaged in deficit spending for my mother's care; each of us have had to obtain second mortgages on our respective houses. In order to provide the appropriate care which my mother requires, I would have to double my salary as a teacher to pay for all the things which are



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necessary.

My family is not a special case. We are merely representative of the catastrophe which is striking millions of lower middle and middle income families today.

While precise data does not exist as to the number of individuals suffering from senile dementia, the best approximate statistical correlation from the National Institute on Aging indicates that one in every ten individuals, aged 60 and older, suffers from senile dementia, and that this per centage increases to one in five for individuals who are 80 years of age or older. Applying these approximations to recent census figures it can be roughly estimated that 200,000 Pennsylvanians and 3,000,000 Americans suffer from senile dementia - over half of these victims being diagnosed as suffering from Alzheimer's Disease. With few exceptions, existing Medicare and other health and hospital insurance plans do not pay for home care devices, services, or supplies. These insurance plans will only pay for home care necessities which directly bear upon an acute medical problem. Senile dementia is a long term health care problem which these insurers define as requiring only "custodial care".

These patients, because of their irreversible deteriorations, are likely subjects for institutionalization in nursing homes or government operated long term care hospitals. Per centage estimates as to the proportion of denetia patients being cared for in these facilities range from 50% - 80%. Perhaps one-half of these patients could be cared for at home.

Private and parochial nursing homes are expensive "custodial care" facilities, costing the patient anywhere from $1,400 - $2,000 per month - medication costs not included. The



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Government Accounting Office aggregated nursing home costs for 1980 to be a national total of twenty-two billion dollars, and project an aggregate total cost in 1990 of over seventy billion dollars. Government operated and taxpayer supported facilities require $2,400 - $3,000 per month for the care of a patient.

Insurance coverage for nursing home costs are minimal at best. Medicare benefits are limited to skilled nursing care for a brief duration. Blue Cross provides a limited supplement to the Medicare benefits. A few private insurers offer a per diem reimbursement to the patient. None of these plans reimburse the patient for custodial or intermediate care, the level of care for which senile dementia patients are defined to require by these insurers.

Accordingly, the cost of home care as well as institutional care is primarily paid from one of two sources: either the patient and/or family monetary resources, or Medicaid. Medicaid, of course, is medical insurance for those individuals who receive public assistance. It is an income entitlement program whose coverage includes the cost of institutional care.

Many senile dementia patients eventually become Medicaid recipients. On the one hand, the patient fully exhausts his assets to pay for his care so as to legitimately qualify for medical public assistance. On the other hand, the patient on his own, or by the machinations of the family, divests himself of his assets by changing the title to real estate and bank accounts, taking ownership out of his name. The patient is suddenly pauperized and eligible for Medicaid coverage.

This use of Medicaid adds to the taxpayer's burden. More importantly, this makes institutional care the primary form of care



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for the dementia patient rather than as a necessary care alternative. The unnecessary or premature institutionalization of the patient uses scarce long term care resources. It also strips the patient of any remaining independence, dignity, and family life.

In addition, it should be noted that since the reimbursement levels under Medicaid are presently felt to be unsatisfactory by nursing home proprietors, a number of these facilities now do not accept Medicaid recipients. It should be further noted that if all chronic care individuals presently living with family at home sought institutional care, there would not be nearly enough beds in America to care for them all.

Therefore, the need to help families caring for loved ones at home must become a major policy issue of government.

One of society's great myths is that families of dementia patients abandon or dump their loved ones into nursing homes. In fact, the great majority of our families strive with desparate valor to maintain their afflicted family members at home in the face of considerable emotional and financial costs. A number of families resort to institutional care only when they are unable to afford the necessary home care services or items, or when continuing care in the home is medically impossible because of the patient's advanced state of intellectual and physical deterioration.

Families do care about their loved ones. They believe that they owe a duty out of love, respect, or even obligation to the patient. Many family members believe that their personal interest and love for the patient, as well as their direct supervision of the patient's care, adds to the patient's comfort and well-being. Institutionalization of the patient frequently removes the family from daily personal contact and deprives them



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from exercising their judgment and implementation of the patient's care. Even the best of nursing homes cannot hope to supply this intensive degree of personalized patient care and support.

Since dementia patients are defined to require only "custodial care", services necessary for the rehabilitation or [illegible] maintenance of the patient's declining functions are not reimbursed. I have attached as an Appendix a brief descriptive listing of the variety of services, devices, and supplies which many families find to be necessary for the patient's care. This list is not intended to be exhaustive but merely illustrative as to what can be done for the patient's care and to substantiate the need for a major tax credit to the families.

I believe that the implementation of the proposed tax credit legislation will provide a variety of benefits to the dementia patient, his family, the government, and to the health care industry.

1. - This would prevent the unnecessary or premature institutionalization of these patients, not only preserving family unity, but enhancing the personal dignity and quality of life for the afflicted individual.

2. - The tax credits would provide immediate assistance to the more than a million American families caring for a loved one at home, as well as encouraging families who face this problem in the future to provide home care.

3. - The tax credits will serve to lessen [illegible] the use of Medicaid and shorten the duration of time a patient might have to avail himself of its institutional care requirements.

4. - The tax credits would provide an incentive to families to improve the quality of care in the home.

5. - The tax credits would be a source of spendable income



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which would encourage the private sector to create or expand home care services, devices, and supplies.

6. - The enhancement of home care would reduce the reliance upon nursing home beds, freeing this scarce resource for those who truly need this level of care.

7. - The enhancement of home care will serve as an encouragement to all levels of government to create or expand community-based services for the home care population.

The need for reimbursement in the form of tax credits would have helped us and can still help us should we be able to secure the resources to bring my mother home from the hospital. Tax credits would be a support to slow or prevent the exhaustion of assets which we have experienced. Otherwise, the cost of my mother's care will finally place two self-reliant citizens of our country unwillingly onto the swollen welfare rolls.

It is imperative that home care be recognized as a crucial component of the long-term health care of a chronic care patient. While the proposed tax credit legislation is not a panacea, it is a critical step in alleviating the burden of homecare costs for the million or more devoted American families caring for the pathetic helpless victims of senile dementia and recognizes their valuable contribution to the long-term care process.

Respectfully Submitted,

Martha A. Penchak

Martha A. Penchak



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# APPENDIX

## I. SERVICES

PHYSICAL THERAPY - To keep the patient ambulatory and to maintain his physical health.

HEARING AND SPEECH THERAPISTS - To maximize the patient's declining communication skills.

OCCUPATIONAL THERAPY - To maintain the patient's motor coordination and enhance his dignity through his ability to perform tasks

REALITY THERAPY - To stimulate the patient's remaining intellectual abilities

VISITING NURSES - To periodically check the patient's condition and to make recommendations for the patient's care

ADULT DAY CARE - Day facilities where the patient might receive therapeutic services and nutritional assistance

TRANSPORTATION - To Adult Day Care centers, doctors' offices, and the like

HOME HEALTH AIDS/ & RESPITE SITTERS - Trained individuals who can assist the patient in his personal care and allow the care giver time to go to work, to school, tend to personal business, etc.

BOARDING RESPITE - Either live-in help on a temporary, short-term basis, or a facility which will care for a patient for a short period, so that the family can take vacations or handle "special events" such as weddings or graduations, etc.

## II. DEVICES

GERI-CHAIR - A specially designed chair to keep the patient upright and to prevent his wandering

WHEELCHAIR - For a patient no longer ambulatory

EASY LIFT CHAIR - Specially designed chair to assist the patient in getting up without help from others.

HYDRAULIC LIFT - To aid the patient in getting in and out of bed without physical strain to the care giver

RESTORATOR - An exercise machine used to keep the patient active and ambulatory

ELECTRIC MUSCLE STIMULATOR - To prevent muscle atrophy from being bed ridden



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HOME MODIFICATION DEVICES - Hall Rails, Step glide lift, portable ramps, bathroom aids, and other home modification devices for the care of the patient.

UTENSILS and DISHES - Specially designed dinnerware to effectuate eating ability.

PORTABLE WHIRLPOOL - To stimulate the patient and to prevent or care for decubitus ulcers

WATER MATTRESS - To prevent or assist in the care of decubitus ulcers.

FEEDING SUPPLEMENT - High protein high nitrogen feeding supplements to provide proper nourishment and prevent a breakdown of skin and body

I-VAC PUMP - To monitor the rate of tube feeding to prevent regurgitation or aspiration pneumonia

SUCTION MACHINE - For patients who suffer regurgitation and/or aspiration pneumonia

III. SUPPLIES

MEDICATIONS - Behavioral control pharmaceuticals for patients who become aggressive, as well as over the counter and prescription medications for patient care.

INCONTINENCE PADS, LINENS, PANTS, AND BED PADS - used for patients who are unable to control bowel and bladder, to prevent or delay need for catheterization

DECUBITUS ULCER PREPARATIONS - Gauze, pades, bandages, lotions.

Senator PACKWOOD. That is the point that those who look at this bill never address. It is not as if additional money is going to be spent that the Government is not spending. They are spending it, and they are spending it with less efficiency and certainly with less loving care than otherwise would be spent with the encouragement of this bill.

Every now and then—and it is frustrating—you simply run up against people who like Government programs, and they have a certain comfort in the fact that the Government collects the money and spends it. It is a frustrasting philosophy, but in some areas we run up against it.

But we will overcome.

Ms. FENCHAK. Thank you.

Senator PACKWOOD. Thank you. And the story that you have told, I guess every one of us either personally has gone through that or certainly has a close friend who has gone through it with parents or aunts or uncles. And this is not something that touches only a few people in America. This almost personally touches every one of us at one time or another.

Monsignor Fahey.

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## STATEMENT OF THE VERY REVEREND MSGR. CHARLES J. FAHEY, FORMER CHAIRMAN, FEDERAL COUNCIL ON AGING, AND PAST PRESIDENT, NATIONAL CONFERENCE OF CATHOLIC CHARITIES

Monsignor FAHEY. Thank you. My name is Charles Fahey. I am a professor at Fordham University in New York City. I used to be president of the American Association of Homes for the Aging, as well as the National Conference of Catholic Charities, and, until fairly recently, was chairman of the Federal Council on Aging.

Germane to this particular consideration, I chaired a year-long study for the Health Advisory Council in the State of New York on informal supports and the way in which government might be supportive of them, a report that might be of interest to the committee and to your staff. Fordham University is deeply involved in the area of informal supports.

I have five points to make this morning. Numerous studies show that the primary long-term care system in the United States is composed of families, friends, and neighbors. For every person who is in a formal system of care, either inpatient or outpatient, there are two people similarly disabled who are being cared for by families and friends.

However, as our Federal Council report "The Need for Long-Term Care" noted, there are a number of pressures upon these informal supports. I am sure they are well known to the committee; things like the instability of family life, the four-generation family, and the increased population of women in the work force. This gives rise to some concern about the strength and the vitality of this phenomenon in American life. Surely, we have to support this delicate ecology.

Second, in the area of the behavior of those who have care of frail people. Persons who have never had the care of a frail person, say, "give us money." If they actually have the care of a frail person, they say, "give us respite, give us skill, give us knowledge, give us assistance, give us help." However, that which is ultimately determinant as to whether a family friend or neighbor cares for a frail person is the quality of long-time relationships.

If you have sung and laughed and danced together, then you are likely to be supportive of one another in difficult times. On the other hand, if there has been a negative relationship within families or within the neighborhood, there is little likelihood that there will be a positive one, in the most difficult period of life.

Is this bill that important? In my judgment, it certainly is, since it makes respite, assistance, help that alleviate the problem of family or friend burnout possible.

Point three, the most attractive aspect of the measure to me is the refund for poor people. For those of higher income level, a tax credit would be useful but not determinative of behavior. However, for middle-income or low-income people, it is a question of survival. Their economic status requires them to work, and unless there is some sort of financial assistance, they simply cannot, no matter how willing, be supportive of a person in their own home. They will have to rely upon the residual welfare program that we know as medicaid.

A fourth point—and this is a little bit of a negative and I hope I am understood correctly, I think it is an error to specifically identify Alzheimer's disease for a variety of reasons.

Senator PACKWOOD. Specifically what?

Monsignor FAHEY. Alzheimer's disease. Certainly, those suffering from Alzheimer's should be covered. However, it is very hard to diagnose Alzheimer's disease, especially in its early stages. Additionally there are other persons whose behavior is similar and whose families are of equal need.

There ought to be a functional test. It ought to include behavior associated with Alzheimer's, but it ought to be broader.

The last point: I suppose I am the author of the concept of using the age 75 as a policy. At least a report that the Federal council issued in 1978 in regard to the frail elderly, introduced as a matter of debate the concept that it would be worthwhile in certain public benefit programs to use age 75 as a triggering mechanism. Our intent was not to add to ageism. There are many people over 75 who are not frail.

However from a statistical point of view, there are a substantial number of people over 75 who are in need of some sort of personal assistance. For administrative simplicity as well as for equity we feel it well to use this as threshold point.

This measure responds directly to suggestions made both in the 1971 and 1981 White House Conference on Aging. They are congruent with work done by the Federal Council on Aging. Disability, particularly among older Americans, is a reality which will not go away. These measures are important elements in the response of humane government to its vulnerable people.

I would like to note one other facet. Projections of the Federal Council indicated that if we do nothing, and under the most favorable assumptions, we would need 500,000 more nursing home beds in the next 20 years. Obviously, we are not going to have them, but we have a serious social problem. It must be addressed by every level of government and society generally. Thank you.

Senator PACKWOOD. Monsignor, you are a very perceptive and warm human. You are right. We are not going to have 500,000 more nursing home beds, and there is no point in wishing that we were, and therefore turning our thoughts away from what alternatives we can come up with. That is sticking our head in the sand. And I wish I could phrase it as well as you can, although you have been involved in this work and a leader in this field for a long, long period of time.

The people that this bill will help are not asking for the Federal Government to take over the entire cost of taking care of their parents or their aunts and uncles. And indeed, the way you phrase it, those who have never been involved in this think that money is the answer, whereas indeed respite and support for those who have to take care of the elderly is more what they want than just money.

And all this bill is going to do and the home health care bill is going to do is to try to make some little dent in that help. We will never get as much as we would like or as much as I think you would like. But if we can inch forward, it is better than nothing.

I cannot tell you how much I appreciate the time and effort you have spent in the better part of your career in giving the leadership in the field that we have needed so badly.

I have no further questions. As you can tell, Senator Roth has gone to vote, and I am going to go to vote. Thank you very much.

We will call the next panel when either Senator Roth or I return. We should be back in just 5 or 10 minutes. [Brief recess.]

Senator ROTH [presiding]. The subcommittee will reconvene. I apologize to the witnesses and all of the others attending these hearings. But as is well known, we are proceeding with the budget resolution so that we can, I guess, expect continued interruption.

At this time it is my great pleasure to call as a panel the Honorable Toby Roth, Representative from the State of Wisconsin; Mr. Rudy E. Small of the U.S. Savings Bond Field Hearing, Green Bay, Wis.; and Mr. Jerry M. Hiegel, president, Oscar Meyer and Co., Madison, Wis.

Congressman Roth, I am particularly delighted to welcome you here. I think you showed unusually good sense in the selection of your last name. [Laughter.]

Senator ROTH. I would point out that I really do not care now whether we call it Roth-Roth or Roth-Roth. [Laughter.]

But seriously, I applaud the initiative that you have taken in this area of trying to make the U.S. Savings Bond more fair, more equitable to the small investor. I would congratulate you. And I am optimistic that something can be done. I would say to the extent that it can be done in the interest of time, if you can summarize your statements, we will, of course, include the full statement in the record.

Mr. Roth.

## STATEMENT OF HON. TOBY ROTH, A U.S. CONGRESSMAN FROM THE STATE OF WISCONSIN

Mr. ROTH. Thank you very much, Senator Roth. I appreciate this opportunity to appear before the Subcommittee today. And I also wish to thank you for all the help you and your office have given us on this companion legislation.

Although I will abbreviate my remarks, I would like to say a word about the two members on the panel with me today, Senator.

Rudy Small, from Green Bay, is an outstanding individual. He is vice president of a paper-converting machine company in Green Bay, Wis., one of the 50 companies that received the U.S. Department of Commerce coveted E award.

We held a hearing in Green Bay to allow the public to give us their views on this legislation. Mr. Small was present at that hearing. I am very happy to have him here.

Jerry Hiegel, president and chief executive officer of Oscar Mayer Food Corp. in Madison, Wis., also is with us. An internationally prominent food manufacturer, Oscar Mayer has for 45 years provided employees participation in a payroll deduction plan for savings bonds. We are delighted to have Mr. Hiegel with us today, too.

My office and I, as you know, Senator, have done a great deal of work on this legislation. Several weeks ago I appeared before the full Ways and Means Committee to discuss my bill.

I have received a great deal of interest, enthusiasm, and comments from grassroots Americans throughout this country. And I think that it is legislation that is very vitally needed, because people throughout the country are asking for it.

Dave Stockman and others in the administration have contacted me in support of the concept of the bill. I will enter those letters into the record, Senator, with your approval.

Currently savings bonds absorb about 9 percent of our national debt. This is one of the reasons that I think that it is crucial that we look at this legislation.

Savings bond redemptions exceeded sales by $26 billion in the period January 1979 through March of this year. I think that this is something that Congress has to be most concerned about.

In conclusion, I would just like to say, Senator, that I have talked to many Congressmen who are very much in favor of this legislation. But we would not, of course, like to see it tied to the national debt ceiling legislation. I hope that we will have a chance to consider this legislation on its own merits, Senator. Thank you.

[The statement follows:]

Senate Subcommittee on Taxation and Debt Management
Summary of Testimony by Toby Roth, United States Representative

I'd like to take a moment to review the progress made on the House version of the Savings Bond Interest Rate Adjustment initiative. Several weeks ago, I appeared before the full Ways and Means Committee to discuss my bill.

At that hearing and at this one, I shared the interest, enthusiasm, and comments from grass roots Americans who today, as in the past, take stock in America. Members of my panel will specifically comment to field hearings held in Green Bay, Wisconsin.

I'd like to address other support received for the Roth-Roth bill. I've received mail from all over the United States. It's clear as a bell to me that to stop the present avalanche of savings bonds redemptions currently taking place, we've got to improve the rate of return. Favorable comment on the concept of my bill has been received from the Director, Office of Management and Budget; Assistant Secretary Legislative Affairs, Department of Treasury; and Director, US Savings Bonds Program.

Mark Twain once observed: "October is one of the peculiarly dangerous months to speculate in investments. Others, "are July, January, September, April, November, May, March, June, December, August, and February."

It's obvious to me, that money today, especially for small savers, is tighter than bark on a tree.

Currently savings bonds absorb 9% of the national debt. Thus, early redemptions of the bonds results in more of the debt carried by monetary instruments paying greater interest rates. Redemptions exceeded sales by $10 billion in the period January 1979 through March of this year.

Since World War II, Americans have looked to the savings bonds program as a safe, secure way of saving and at the same time contributing to the economy of our country. This is consistent with the Administration's commitment to a free market pricing system.

It is my firm conviction that this issue is worthy of separate legislation. Senator Roth and I have garnered significant support from our colleagues. If this important adjustment for the small saver is held hostage to legislation to raise the level of the national debt ceiling, support will literally wither on the vine. The real loser will be the small saver. It is within the purview of this Committee to attach the importance to this legislation it deserves.

Mr. Chairman, may I introduce the members of this panel.

I'd like to commend Mr. Hiegel and Mr. Small for their enthusiasm and expert testimony. They have indeed made an invaluable contribution to the work of this Committee and this Congress.

I would hope that we could move swiftly and surely to passage of S. 2075 by this Committee and the full Senate. You can be certain of my best efforts to see passage of HR 5480 by the Ways and Means Committee and my colleagues in the House of Representatives.

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UNITED STATES SENATE

COMMITTEE ON FINANCE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

TESTIMONY BY

TOBY ROTH

UNITED STATES REPRESENTATIVE

on
Friday, May 21, 1982
at 10:15 a.m.
at 2221 Dirksen Building

REGARDING
S. 2075 to amend the Second Liberty Bond Act to increase the investment yield on United States Savings Bonds

Introduced by William V. Roth, Jr.
United States Senator, on February 8, 1982

Identical to HR 5480 introduced by Toby Roth
United States Representative, on February 8, 1982

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Mr. Chairman and distinguished members of this Subcommittee, it is a particular privilege and pleasure to have this opportunity to testify on the merits of legislation that I initially introduced in the House of Representatives last fall and reintroduced in conjunction with Senator Roth's bill, S. 2075 early this year. My bill, HR 5480, is identical to this Senate initiative.

I'd like to take a moment to review the progress made on the House version of the Savings Bond Interest Rate Adjustment initiative. Several weeks ago, I appeared before the full Ways and Means Committee to discuss my bill. Also participating in that hearing were representatives of the Debt Management Division of the US Treasury and the Director of the US Savings Bonds Program.

At that hearing and at this one, I shared the interest, enthusiasm, and comments from grass roots Americans who today, as in the past, take stock in America. Members of my panel will specifically comment to field hearings held in Green Bay, Wisconsin in early January 1982 as well as comment on the success of the payroll savings plan.

I'd like to address other support received for the Roth-Roth bill. Like my colleague in the Senate, I've received mail from all over the United States asking the progress of the interest enhancing measure. It's clear as a bell to me that to stop the present avalanche of savings bonds redemptions currently taking

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place, we've got to improve the rate of return on this investment to make it comparable to similar savings instruments. Favorable comment on the concept of my bill has been received from the Director, Office of Management and Budget; Assistant Secretary Legislative Affairs, Department of Treasury; and Director, US Savings Bonds Program.

Mark Twain once observed: "October is one of the peculiarly dangerous months to speculate in investments. Others, "are July, January, September, April, November, May, March, June, December, August, and February."

It's obvious to me, and probably to you as well, that money today, especially for small savers, is tighter than bark on a tree. Therefore, we must do something to continue to attract the more sophisticated small saver to the U.S. Savings Bonds program.

Currently savings bonds absorb 9% of the national debt. Thus, early redemptions of the bonds results in more of the debt carried by monetary instruments paying greater interest rates. Redemptions exceeded sales by $26 billion in the period January 1979 through March of this year. This in turn creates even more national debt.

Since World War II, Americans have looked to the savings bonds program as a safe, secure way of saving and at the same time contributing to the economy of our country. I feel we must



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adjust our savings bonds rate of interest to take into account the present day interest rate even though it is as unconscionable as chewing gum. This is consistent with the Administration's commitment to a free market pricing system.

Gentlemen, it is my firm conviction that this issue is worthy of separate legislation. Senator Roth and I have garnered significant support from our colleagues. However, if this important adjustment for the small saver is held hostage to legislation to, for instance, raise the level of the national debt ceiling, support will literally wither on the vine. The real loser again will be the small saver who puts aside a couple of bucks each payday with a sense of future purpose and civic pride. It is within the purview of this Committee to attach the importance to this legislation it deserves. This is my goal in appearing before you today.

And now, I'd like to ask my associates on this panel to address the effectiveness of the U.S. Savings Bonds to the American small saver and the success of the current Payroll Savings Plan Drive underway in agencies, business, and corporations all over America. I'd like to introduce to you representatives of the Stockholders of the United States of America.

Mr. Chairman, may I introduce the members of this panel.



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(Testimony by Messrs. Small and Hiegel.)

I'd like to commend Mr. Hiegel and Mr. Small for their enthusiasm and expert testimony. Its refreshing to find citizens who are willing to represent their communities and companies and do so very professionally. They have indeed made an invaluable contribution to the work of this Committee and this Congress.

Mr. Chairman and distinguished members of this Subcommittee, I appreciate this opportunity to pledge my support in the House of Representatives for this initiative in the Senate. I would hope that we could move swiftly and surely to passage of S. 2075 by this Committee and the full Senate. You can be certain of my best efforts to see passage of HR 5480 by the Ways and Means Committee and my colleagues in the House of Representatives. Your attention and support is personally rewarding to me as one sponsor of the Roth-Roth bill. Thank you.



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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Honorable Toby Roth
House of Representatives
Washington, D. C. 20515

Dear Toby:

Thank you for your letter of December 29, 1981, regarding H.R. 4853, a bill that you have introduced "to increase the investment yield on United States savings bonds to a level competitive with comparable investments."

Although we will not be sending a representative to your hearing on Monday, January 11, 1982, I do want to express the Administration's whole-hearted support for the goal of H.R. 4853. We agree that it is important that we do what we can to limit the redemption of United States savings bonds by making them more attractive to potential purchasers. A market-based rate of return on savings bonds would, in my view, go a very long way towards reducing the current gap between savings bond sales and redemptions.

The Department of the Treasury will shortly be transmitting to Congress on behalf of the Administration a legislative proposal to provide greater flexibility in savings bond yields. The Treasury proposal will allow sufficient flexibility to ensure that United States savings bonds offer purchasers a competitive alternative for their investment dollars. In addition, the Treasury Department's draft bill will address problems resulting from the present $70 billion limit on Treasury bonds bearing interest rates in excess of 4.25%. Removal of the 4.25%/$70 billion cap will permit the Treasury to issue additional bonds with more market-like interest rates, while simultaneously conducting its borrowing in a more orderly fashion.

I hope that we can count on your support not only for the Administration's savings bond and Treasury bond proposals, but also for the rest of the President's program, as we work together during the second session of the 97th Congress.

Sincerely,

David A. Stockman

David A. Stockman
Director

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

January 5, 1982

Dear Mr. Roth:

Secretary Regan has asked me to thank you for your letter concerning your bill, H.R. 4853, which would authorize the Secretary of the Treasury to fix the investment yield on United States savings bonds at a yield which would make savings bonds competitive with comparable investments.

We share your concern that savings bonds should be more competitive with other savings instruments. Your support for the Administration's proposal for a market-based variable interest rate for savings bonds is greatly appreciated, and we look forward to working with you when the Administration submits legislation to the Congress on this proposal in the near future.

Sincerely,

W. Dennis Thomas
Assistant Secretary
(Legislative Affairs)

The Honorable
Toby Roth
House of Representatives
Washington, D.C. 20515

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THE TREASURER OF THE UNITED STATES
WASHINGTON, D.C. 20220

January 12, 1982

Dear Congressman Roth,

I thoroughly enjoyed meeting with you this morning and am delighted with H.R. 4853. The small saver is entitled to a fair return on his money, and I believe Congress will agree.

I look forward to working with you in the passage of this bill.

Sincerely,

Bay Buchanan

Senator ROTH. Thank you.

**STATEMENT OF RUDY E. SMALL, MEMBER OF PANEL, U.S. SAVINGS BOND FIELD HEARING, GREEN BAY, WIS.**

Mr. SMALL. Thank you, Senator Roth. I am Rudy Small, and I served on Congressman Roth's panel that heard testimony in the field hearing on the U.S. savings bond bill. I would like to present some of the views that were expressed in that hearing very briefly.

Some comments from a U.S. Army National Guard officer who had been in the Guard for over 29 years: Overall, the payroll savings plan has helped many American soldiers to put something aside for later in life, and has been the most convenient and tailor-made program for the average GI.

From an insurance professional: Maybe we should, in view of our large deficits in government, consider giving a tax break to people who can save a small amount of money in bonds which would discourage them from going elsewhere.

An official of one of the Fortune 500 companies located in Green Bay:

Refinement of the program will make savings bonds more competitive with other government monetary instruments. An updated program would be particularly beneficial to small and beginning investors who find other U.S. Treasury investments out of their reach.

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From a senior citizen:

Buying bonds was a good investment, but I only buy into money market now where interest rates are higher. I still have my bonds, but will not buy any more unless there is a better return on my investment. I would support Congressman Roth's suggestion calling for higher interest.

And the director of the Center for Consumer Affairs made the following observation:

To attract dollars held by consumers, perhaps the largest pool of capital available in the country, the U.S. Treasury should propose to change the mix of products which it offers in its efforts to attract dollars in order to finance the workings of government.

Obviously, from these comments, there is a sound basis for the legislation being considered here. In summary, I would like to outline some of the advantages of this proposal. It is a simple regular savings plan for the small investors, including the servicemen of our country. It is an attractive return on those savings, considering all factors, patriotic motivation, long-term financial goals like retirement, and the security of U.S. savings bonds.

Another factor is that payroll deduction for U.S. savings bonds is one of the few deductions most employers will administer. Payroll deduction through the employers is an accepted method of saving small amounts. Banks are not interested, really, in similar convenient methods unless there are large amounts involved.

The small investor can accumulate a sum over the years by investing an amount he can afford on a regular basis. He cannot put together enough money at one time for the large denomination Government securities available through financial institutions.

Six, the Government would benefit from a steady flow of funds at reasonable rates which are in consideration of their long-term duration, the security of the U.S. bonds, and the patriotic motivation that many people have. It also would not be subject to the violent fluctuations in interest rates in the short-term money market.

For all of these reasons and others outlined on the record, I urge your favorable consideration of the legislation proposed by Senator and Congressman Roth. Thank you very much.

[The statement follows:]

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Senate Subcommittee on Taxation and Debt Management
Summary of Testimony by Rudy E. Small, Member, Savings Bond Field Hearing Panel

I am Rudy E. Small. I served as a member of Congressman Roth's Panel that heard testimony at a field hearing on the United States Savings Bond bill. It's an honor for me to appear before you today to present the views of the people in Wisconsin who participated in that field hearing.

The following are comments by a member of the United States Army National Guard:

> ...Overall the payroll savings plan has helped many American soldiers to put something aside for later in life and has been the most convenient and tailor-made program for the average GI....

An insurance professional commented:

> Maybe we should, in view of our large deficits in government, consider giving a tax break to people who can save a small amount of money in bonds which would discourage them from going elsewhere....

An official of a company, newly named to the Fortune 500 List provided his organization's support Savings Bond program:

> Refinement of the program will make Savings Bonds more competitive with other government monetary instruments.... An updated program would be particularly beneficial to small and beginning investors who find other US Treasury investments out of their reach....

Comments from senior citizens:

> Buying bonds was a good investment but I only buy into Money Market now where the interest rates are higher....I still have my bonds, but won't buy more unless there is a better return on my investment. I would support Congressman Roth's suggestion calling for higher interest.

The Director of a Center for Consumer Affairs made the following observations

> ....to attract dollars held by consumers, perhaps the largest pool of capital available in the country....the United States Treasury, should propose to change the mix of products which it offers in its efforts to attract dollars in order to finance the workings of government....

It was particularly rewarding to me to find that grass roots Americans are keenly interested and aware of the advantages and disadvantages of the present day Savings Bond program.

The initiative by my Congressman and Senator Roth is one supported by constituents in Wisconsin. I appreciate this opportunity to speak in behalf of my fellow citizens.

Americans still want to "take stock in America" -- but they want to see a fair rate of return for their investment. The Roth-Roth bill seeks to do this.

Thank you.

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TESTIMONY BY

RUDY E. SMALL

MEMBER,

SAVINGS BOND FIELD HEARING PANEL

Good Morning, Mr. Chairman and members of this Senate Subcommittee. I am Rudy E. Small. I served as a member of Congressman Roth's Panel that heard testimony at a field hearing on the United States Savings Bond bill sponsored by Mr. Roth. It's an honor for me to appear before you today to present the views of the people in Wisconsin who participated in that field hearing.

Traditionally a significant number of US Savings Bonds are purchased by our men and women in military uniform. The following are comments by a member of the United States Army National Guard with 29 years of military experience:

> ...Overall the payroll savings plan has helped many American soldiers to put something aside for later in life and has been the most convenient and tailor-made program for the average GI....Support for these incentives can enhance payroll savings plans in the Armed Forces, and in this soldier's opinion, it would be very rewarding for the people that we need the most, and that's the people in the lower grades.

An insurance professional commented on the advantages Savings Bonds could have for the small investor:

> Maybe we should, in view of our large deficits in government, consider giving a tax break to people who can save a small amount of money in bonds which would discourage them from going elsewhere....For the small saver I think payroll deductions always have been a very

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attractive and a very easy way to save money, and I think this idea should be encouraged and retained, and if you can embellish that any more than that, if the government can advance, accelerate, publicize this program, I think it would be beneficial to everyone because the majority of the people in this country are small savers, not large savers.

An official of a company, newly named to the Fortune 500 List with a ranking of 6th in return of sales, provided his organization's support for refinement of the Savings Bond program:

Refinement of the program will make Savings Bonds more competitive with other government monetary instruments.... An updated program would be particularly beneficial to small and beginning investors who find other US Treasury investments out of their reach....We have always encouraged our employees to save for their retirement and the proverbial rainy day.... Our company continues to provide Savings Bond payroll deduction capabilities for employees.

Comments from senior citizens:

....Yes, I would buy bonds if the interest was more competive. If there would be a crisis in the economy of the world we can usually rely on government bonds as being a safe way to have a little nest egg....Buying bonds was a good investment but I only buy into Money Market now where



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the interest rates are higher....I bought government bonds years ago and....I still have my bonds, but won't buy more unless there is a better return on my investment. I would support Congressman Roth's suggestion calling for higher interest.

The Director of a Center for Consumer Affairs made the following observations

....enhanced competition among providers of financial services intends to attract dollars held by consumers, perhaps the largest pool of capital available in the country. An eagerness on the part of consumers to participate in heretofore untraditional consumer financial practices, in an attempt to achieve higher yields. Thus, it is of little surprise that the federal government, working through the United States Treasury, should propose to change the mix of products which it offers in its efforts to attract dollars in order to finance the workings of government....

To the extent that savings bonds are available with variable interest rates, they clearly are positive from the point of view of small investors who are precluded from obtaining such premier-quality investments as government bonds through the minimum denomination requirements typically imposed for US Treasury bills, notes and bonds....Savings Bonds would have their corresponding "market rate" depressed somewhat by their



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relatively higher security and enhanced somewhat by their relative illiquidity.

While it is not illogical that consumers would want money market mutual funds returns on government obligations, it is illogical to expect comparable returns on such savings bonds. There are few, if any, comparable investments other than other government obligations, with corresponding security and tax advantages.

It was particularly rewarding to me to find that grass roots Americans are keenly interested and aware of the advantages and disadvantages of the present day Savings Bond program. The comments from various members of the community were unanimous in their concern for a fair rate of return for the small saver who wants to put something away for their further education, a rainy day or retirement. A common sense approach and a sense of fairness dictates that small savers should not be penalized in opportunities for saving and investing.

The initiative by my Congressman and Senator Roth is one supported by constituents in Wisconsin. I appreciate this opportunity to speak in behalf of my fellow citizens.

The advertising folks for the Savings Bond Division at Treasury have done a good job -- Americans still want to "take stock in America" -- but they want to see a fair rate of return for their investment. The Roth-Roth bill seeks to do this.

Thank you for your attention, I'd be happy to respond to your comments at the appropriate point in these preceedings.

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Mr. ROTH. Maybe next we can hear from Mr. Hiegel.

## STATEMENT OF JERRY M. HIEGEL, PRESIDENT, OSCAR MAYER FOODS CORP., MADISON, WIS.

Mr. HIEGEL. I am very pleased to be here to represent Oscar Mayer Foods Co. and myself personally today. I am very anxious to support legislation which is flexible and competitive in the bond program.

The Oscar Mayer Foods Co., which is the successor corporation of Oscar Mayer & Co., has been active in the bond program since 1945. At that time our now-retired chairman, Oscar G. Mayer, Jr., who was not only an unusual individual but patriotically bent, took a part in the national campaign on two different occasions as national chairman of the food marketing end of the business.

In more recent time, our past chairman, R. M. Bolz, has served as the Wisconsin State chairman and I am in my second term as the Wisconsin State chairman, and it has been a pleasure.

We feel that our company supports the bond program very, very strongly. Our participation rate last year was 64 percent. Unfortunately, it has fallen from some 81 or 82 percent in previous years, which I believe is due to the confusion that has been created in the interest market for the small savers during this time, and I do not believe that that money has gone into investments. I believe it has disappeared into spending.

I have very strong feelings about the bond program. In my own personal case I have been a bond buyer for these many, many years—36—that I have spent with Oscar Mayer, as my father was before me. I think that it is convenient in terms of payroll deductions. I think that tax deferral is something that people tend to forget about, but the most important part that I find is that in my own case, being the father of eight children, that it is a very necessary emergency fund that can be conveniently put aside for my wife in the hopes that she never needs it, of course.

Finally, I think that it is our duty as part of our country's financing to have a bond program. I think that many people forget that aspect of it and we have lost a lot of that financing and I think it is a serious problem.

The final thing that I think is most interesting and I think many people are not thinking about is the total safety of this kind of an emergency fund. I think we are having some current tremors that might remind people what the safety of the bond savings program is.

I would like to leave you with one thought and that is that I am very supportive of the Roth-Roth bill and I am very supportive of flexible and competitive situations for the bond program. I think that action is necessary. Thank you very much.

[The prepared statement of Mr. Hiegel follows:]

Senate Subcommittee on Taxation and Debt Management
Summary of Testimony by Jerry M. Hiegel, President and
Chief Executive Officer, Oscar Mayer Foods Corp.

Mr. Chairman and members of the Subcommittee,

Oscar Mayer Foods Corporation has supported the Savings Bond payroll deduction plan for employees since World War II. In 1981, 64% of our 10,300 Oscar Mayer employees participated in the payroll deduction plan for U.S. Savings Bonds. This placed us 12th highest of all companies in the United States with more than 5,000 employees.

Oscar Mayer people have also contributed many hours of their time to leadership roles on behalf of Savings Bonds. Oscar G. Mayer, Jr., the retired chairman of our company, proudly served two terms as national chairman of the Food Manufacturing Division's Savings Bond drives.

And I'm proud to say that I currently serve as chairman of the Wisconsin Savings Bonds volunteer program, having recently succeeded another retired Oscar Mayer chairman, Bob Bolz, in that capacity. When Mr. Bolz talked to me about taking the Wisconsin chairmanship, he really didn't have to do much arm twisting.

I believe in Savings Bonds, and I've been buying them for many years. And it's not that other investments aren't more attractive, because you and I know there are better places for a person in my tax bracket to put his money.

I've bought Bonds because they're easy to buy through payroll deductions. I've bought Bonds because they provide a nice emergency fund for my wife Dorothy and our eight children to use in the event something happened to me.

And, this may sound corny to some people today, but I have also bought Bonds because it's a patriotic thing to do. Savings Bonds help this great country of ours by reducing the amount the federal government has to borrow elsewhere to fund its programs. That helps to keep our federal deficit down and acts as a brake against inflation.

I understand that the concept of the Roth-Roth Bill attempts to tie the interest rate paid on Savings Bonds to a comparable investment instrument. I think they recognize, as millions of Americans do, that something must be done -- and soon -- to restore the Savings Bond program's health and vitality.

This proposed legislation is timely and most welcome. I'm here to do all I can to urge its adoption by the 97th Congress.

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TESTIMONY BY

JERRY M. HIEGEL

PRESIDENT AND CHIEF EXECUTIVE OFFICER

OSCAR MAYER FOODS CORPORATION

Mr. Chairman and members of the Subcommittee,

I am very pleased to appear before this subcommittee to express my personal support and my company's support for U.S. Savings Bonds. I want to offer my full support for legislation that would provide for a more flexible yield on savings bonds and make Savings Bonds more competitive with other forms of investment.

For my company believes in Savings Bonds, and we put our money where our mouth is, so to speak. Oscar Mayer Foods Corporation has supported the Savings Bond payroll deduction plan for employees since World War II. In terms of percentage participation by our employees, we have consistently ranked among the top industrial firms in the United States. In 1981, for example, 64% of our 10,300 Oscar Mayer employees participated in the payroll deduction plan for U.S. Savings Bonds. This placed us 12th highest of all companies in the United States with more than 5,000 employees.

Oscar Mayer people have also contributed many hours of their time to leadership roles on behalf of Savings Bonds. Oscary G. Mayer, Jr., the retired chairman of our company, proudly served two terms as national chairman of the Food Manufacturing Division's Savings Bond drives. Through the years, a number of our executives in Madison and elsewhere have headed local or regional Bond drives. And I'm proud to say that I currently serve as chairman of the Wisconsin Savings

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Bonds volunteer program, having recently succeeded another retired Oscar Mayer chairman, Bob Bolz, in that capacity.

When Mr. Bolz talked to me about taking the Wisconsin chairmanship, he really didn't have to do much arm twisting. I believe in Savings Bonds, and I've been buying them for many years. And it's not that other investments aren't more attractive, because you and I know there are better places for a person in my tax bracket to put his money. I've bought Bonds because they're easy to buy through payroll deductions. I've bought Bonds because they provide a nice emergency fund for my wife Dorothy and our eight children to use in the event something happened to me.

And, this may sound corny to some people today, but I have also bought Bonds because it's a patriotic thing to do. Savings Bonds help this great country of ours by reducing the amount the federal government has to borrow elsewhere to fund its programs. That helps to keep our federal deficit down and acts as a brake against inflation.

I understand that the concept of the Roth-Roth Bill (H.R. 5480 and S. 2075) which attempts to tie the interest rate paid on Savings Bonds to a comparable investment instrument, has the support of the Reagan Administration and many elected officials on Capitol Hill. I think they recognize, as millions of Americans do, that something must be done -- and soon -- to restore the Savings Bond program's health and vitality.

This proposed legislation is timely and most welcome. I'm here to do all I can to urge its adoption by the 97th Congress.

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Senator ROTH. Thank you very much, gentlemen, for your very fine statement. I have just two questions that I would like to ask. As you may have heard me say earlier, the Treasury Department is transmitting a savings bond proposal to Congress. This differs from our Take Stock in America Act in that it would peg the bond interest rate to 85 percent of the average rate for a 5-year Treasury security and in that it would establish an interest rate floor to protect investors.

Do any members of this panel care to comment on that proposal?

Representative ROTH. Senator, I believe that our companion bills, H.R. 5480 and S. 2075, provide for a fair rate of return on savings bonds for the small saver. The formula for calculating the rate of interest allows for the advantage of the security of the bond while allowing interest similar to that paid on investments requiring larger commitments of funds by more affluent savers. I think the 85 percent of the 52-week Treasury bill formula is a fair rate of return. It reflects the current state of the economy and rewards the saver for putting away funds for the full term of the bond. This will help to resolve the current redemptions-exceeding-sales situation.

However, I would give careful consideration of the Treasury formula because it does address the additional safeguard of a floor for the rate of interest paid on the bond as well as allowing the rate of interest an opportunity to "float" and reflect the rate of interest during the entire term of the bond. Clearly this would be advantageous to the Treasury if this discretionary provision is part of the final language of the bill reported by the Senate and House Committees. Believing Treasury wants to secure the future of the savings bonds, I would view giving more discretionary power to the Treasury as not harmful.

Senator ROTH. The final question is, Do you see any downside risk vis-a-vis other investment securities for the new savings bond we are proposing in the Roth-Roth package?

Representative ROTH. I do not see any problem here, Senator. The savings bond appeals to the small, consistent saver who values the security and long term of the investment. Therefore, other investment securities would continue to appeal to savers with more funds to invest who seek greater financial reward with the associated risks involved. As investors become more sophisticated, I would anticipate that additional savings might be placed in other investment securities in addition to the savings bond. Treasury has proposed changes to both the savings bonds and the long-term bonds in order to continue to attract the more sophisticated saver. This endorses the proposals we've set forth in the Roth-Roth package, in my view. My goal is to make sure that people can invest in savings bonds because it is both a practical and patriotic thing to do.

Senator ROTH. Well, gentlemen, I want to thank all three of you for your patient forbearance and particularly for your helpful testimony. I think this initiative is an important one and I am very optimistic, Congressman Roth, that we will prevail before the summer is out.

Representative ROTH. I think so. I think we will, Senator, and I appreciate your support and help in this effort.

Senator ROTH. Thank you very much.

At this time it gives me great pleasure to call forth Mr. Frank Perdue, who is chairman of Perdue Farms of Salisbury, Md., to testify on behalf of the Delmarva Poultry Industry.

To borrow a phrase, Mr. Perdue, I guess it would be appropriate to say that it may take a tough man to tenderize the IRS. [Laughter.]

I do welcome you here. I do not think you need any introduction. I think you are probably the best known person on the Hill today, but I do appreciate your taking the time to testify with respect to the legislation involving the investment tax credit.

**STATEMENT OF FRANKLIN P. PERDUE, CHAIRMAN, PERDUE FARMS, INC., SALISBURY, MD., ON BEHALF OF DELMARVA POULTRY INDUSTRY, INC.**

Mr. PERDUE. Thank you, Senator. My name is Frank Perdue and I appear before you today as a broiler producer/processor with operations in Delaware, Maryland, Virginia, and North Carolina. My statement is presented on behalf of the following national, regional, and State poultry and egg associations:

Delmarva Poultry Industry, Inc., Delaware Poultry Improvement Association, National Broiler Council, the National Turkey Federation, Poultry & Egg Institute of America, Pacific Egg & Poultry Association, Southeastern Poultry & Egg Association, Alabama Poultry & Egg Association, Arkansas Poultry Federation, Florida Poultry Federation, Georgia Poultry Federation, Maine Poultry Federation, Mississippi Poultry Federation, North Carolina Poultry Federation, Pennsylvania Poultry Federation, Texas Poultry Federation & Affiliates, Virginia Broiler Producers Association, Virginia Egg Council, Virginia Poultry Federation, and Virginia Turkey Association.

I am sure there is more. All of the organizations on whose behalf I appear today strongly support S. 1485 as introduced by you, Senator Roth. We are hopeful that this legislation will provide final clarification of congressional intent to allow the investment tax credit for single purpose agricultural or horticultural structures, which would include poultry houses, retroactive to August 15, 1971.

There is a great and widespread concern being expressed about the farm crisis caused by the current severe economic squeeze affecting many segments of American agriculture. The Department of Agriculture recently reported that the average value of farmland in the year ending February 1, 1982, declined 1 percent—the first such decline in 28 years.

Congress is presently considering new legislation that will help alleviate the farmers' plight. The investment tax credit issue that we are addressing today is an unfortunate example of how the clear intent of Congress back in 1978 has been continually denied by the IRS, and the individual growers have been the victims. S. 1485 would clarify once and for all this ITC question and will directly benefit the individual growers who have invested their money in these single purpose agricultural or horticultural structures.

The first expression of congressional intent came when the investment credit was restored in the Revenue Act of 1971, having been discontinued in 1969. The Senate Finance Committee in its report accompanying the 1971 act specifically referred to this matter and noted that the reinstated investment credit would be applicable to structures specifically designed and closely related to the use of the equipment it houses.

The report used as an example a unitary system for raising hogs which is similar to the system used for the production of poultry and eggs. Despite this expression of intent, subsequently supported by favorable court decisions, the Internal Revenue Service continued to deny the credit to poultry producers.

Congressional intent was expressed even more clearly when an amendment to the Revenue Act of 1978 defined single purpose agricultural or horticultural structures to be treated as section 38 property and stated that the amendments shall apply to taxable years ending after August 15, 1971. We were delighted with the passage of that legislation, because we thought this would finally convince IRS of the intent of Congress to allow the credit and to apply it retroactively to 1971 since the 1978 amendment was merely a clarification of existing law that such facilities have always qualified for credit.

However, IRS took the position that a refund claim is not timely unless made before the latest of 3 years from the filing date of the tax return or 2 years from the payment of the taxes. The only exception would apply to those producers who challenged the Service's position.

The Treasury Department has stated that because of the IRS policy of retaining tax returns for individual taxpayers for only 7 years, a bill such as S. 1485 would create an unreasonable administrative burden—particularly where the original return of the taxpayer has been destroyed. It seems to us that the burden will be on the individual taxpayer to furnish a copy of previous returns when a refund claim is made.

If the IRS had properly followed the intent of Congress that was very clearly stated in 1971 and again in 1978, they would not have to be concerned with lack of documentation to verify claims. At any rate, the individual taxpayers entitled to this tax credit should not continue to be penalized.

We do not believe that it was the intent of Congress to place a premium on taxpayer opposition to prior Service rulings and to penalize those who did not challenge the IRS. It should be pointed out that the amount of credit on any one poultry facility that was denied in the 1970's was generally less than $5,000—an amount which did not warrant extensive litigation by individual poultry producers but is nevertheless significant to an individual grower and his family.

There is absolutely no question in our minds that Congress intended the credit to be retroactive to taxable years which ended on or after August 15, 1971. We believe that S. 1485 will provide the mechanism for qualified producers to claim the credit to which they are entitled.

I appreciate the opportunity to appear before this subcommittee today. The poultry and egg associations represented are grateful

for this forum to present their views on legislation which, if enacted, should clarify once and for all the intent of Congress with regard to the investment tax credit for poultry houses.

We very strongly urge your favorable consideration of S. 1485, and we appreciate your introducing it.

Senator ROTH. Thank you, Mr. Perdue. You know, one of the things that particularly bothers me in this area, as I indicated before, is the inequity, the unfairness to really the small farmer. I am not sure that everybody here appreciates the fact that the broiler industry, one of the most successful agricultural pursuits in the country, has succeeded without Government supports and special programs.

In view of that success, to me it is incomprehensible the roadblocks that have been created down through the years in giving this industry, this agribusiness, the same kind of treatment that was being given other kinds of businesses. But history shows that the IRS has consistently fought the application of the investment credit to single purpose houses and have constantly found one way or one basis, one means, of trying to avoid giving something to the farmer that Congress has clearly indicated it desired.

Now they can talk all they want about the problems of the statute of limitations and so forth, but would you agree with me that one of the greatest complaints today about taxes, tax policy, is the fact that it is seen as being unfair and inequitable? Here we have a case that many small farmers, small people—you are big; you are able to take care of yourself, I know—but here we have a problem of the little guy coming out again on the short end and it is just not equitable and I think helps to put distrust and unhappiness about the whole situation.

Mr. PERDUE. Yes. I think that it should be pointed out that probably 95 percent of the broilers in this country are grown by farmers on a contractual arrangement in their house, on their chicken farm, with people like ourselves in all of the different broiler-growing States. So the inequity is not for the integrated broiler producer themselves, like us, but the inequity is against the individual farmer who cannot afford the litigation cost to defend himself for the relatively small amount of money that is involved in each case.

Senator ROTH. The tragedy about that is we are already having enough problems maintaining the small family farm, so this is just another chip in the block.

Mr. Perdue, I want to express my appreciation for your taking the time to come testify on this behalf. I know it is of no direct interest to you, except to the extent that you are interested in a solid, healthy broiler industry and the many people who participate in it.

Mr. PERDUE. Well, it is of great concern to me because we grow chickens with perhaps 1,800 people—1,800 farmers—over these four States in which we do business, and their welfare is very important to me because without them our facilities are useless or we would have to, as only one company that I am aware of in this industry in any major degree, owns their own chicken houses and they are on the west coast.

But, after all, I am basically a farmer and that is where I started, and I am very proud of that fact and I have always been very

proud of my relationship and association with farmers and I know that they are severely underpaid people in almost every respect. Grain prices are just not such that they can break even and if they were paid by the hour their income per hour is pretty low for the average farm in America.

So thank you very much for your time.

Senator ROTH. Thank you very much.

At this time I am pleased to call forward Mr. Wright, of Cranbury, N.J., on behalf of the Society of American Florists; my good friend Mr. John Kling, of Kling's Livestock, Wyoming, Del., who is appearing on behalf of Delaware Pork Producers Association; as well as Mr. Alvin Geske, of Davis & McLeod, Washington, D.C.

Gentlemen, I am very pleased to welcome all of you here. I am particularly pleased to see my old friend Jack Kling, who has the best scrapple in the world, among other things. I would say to you gentlemen, like I have said to the preceding panels, that it would be appreciated if you could summarize your testimony and we will include your full statement as if read.

Mr. Kling.

STATEMENT OF FRANK PERDUE

on behalf of

20 National, Regional and State Poultry Associations

before the

Subcommittee on Taxation and Debt Management

Senate Committee on Finance

May 21, 1982

Re: S. 1485

Mr. Chairman, my name is Frank Perdue. I appear before you today as a broiler producer/processor with operations in Delaware, Maryland, Virginia and North Carolina. My statement is presented on behalf of the following national, regional and state poultry and egg associations:

Delmarva Poultry Industry, Inc., Delaware Poultry Improvement Association, National Broiler Council, National Turkey Federation, Poultry and Egg Institute of America, Pacific Egg and Poultry Association, Southeastern Poultry & Egg Association, Alabama Poultry & Egg Association, Arkansas Poultry Federation, Florida Poultry Federation, Georgia Poultry Federation, Maine Poultry Federation, Mississippi Poultry Association, North Carolina Poultry Federation, Pennsylvania Foultry Federation, Texas Poultry Federation and Affiliates, Virginia Broiler Producers Association, Virginia Egg Council, Virginia Poultry Federation, and Virginia Turkey Association.

All of the organizations on whose behalf I appear today strongly support S. 1485 as introduced by Senator Bill Roth. We are hopeful that this legislation will provide final clarification of Congressional intent to allow the investment tax credit (ITC) for single purpose agricultural or horticultural structures (which would include poultry houses) retroactive to August 15, 1971.

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There is great and widespread concern being expressed about the "farm crisis" caused by the current severe economic squeeze affecting many segments of American agriculture. The Department of Agriculture recently reported that the average value of farmland in the year ending February 1, 1982 declined 1% - the first such decline in 28 years.

Congress is presently considering new legislation that will help alleviate the farmers' plight. The investment tax credit issue that we are addressing today is an unfortunate example of how the clear intent of Congress back in 1978 has been continually denied by the IRS, and the individual growers have been the victims. S. 1485 would clarify once and for all this ITC question and will directly benefit the individual growers who have invested their money in these single purpose agricultural or horticultural structures.

The first expression of Congressional intent came when the investment credit was restored in the Revenue Act of 1971. The Senate Finance Committee in its report accompanying the 1971 Act specifically referred to this matter and noted that the reinstated investment credit would be applicable to structures specifically designed and closely related to the use of the equipment it houses. The report used as an example a unitary system for raising hogs which is similar to the system used for the production of poultry and eggs. Despite this expression of intent, subsequently supported by favorable court decisions, the Internal Revenue Service continued to deny the credit to poultry producers.

Congressional intent was expressed even more clearly when an amendment to the Revenue Act of 1978 defined single purpose agricultural or horticultural structures to be treated as Section 38 property and stated that the amendments "shall apply to taxable years ending after August 15, 1971." We were delighted with the passage of that legislation, because we thought this would finally convince IRS of the intent of Congress to allow the credit and to apply it retroactively to 1971 since the 1978

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amendment was merely a clarification of existing law that such facilities have always qualified for the credit. However, IRS took the position that a refund claim is not timely unless made before the latest of three years from the filing date of the tax return or two years from the payment of the taxes. The only exception would apply to those producers who challenged the Service's position.

The Treasury Department has stated that because of the IRS policy of retaining tax returns for individual taxpayers for only seven years a bill such as S. 1485 would "create an unreasonable administrative burden - particularly where the original return of the taxpayer has been destroyed." It seems to us that the burden will be on the individual taxpayer to furnish a copy of previous returns when a refund claim is made. If the IRS had properly followed the intent of Congress that was very clearly stated in 1971 and again in 1978, they would not have to be concerned with lack of documentation to verify claims. At any rate, the individual taxpayers entitled to this tax credit should NOT continue to be penalized.

We do not believe that it was the intent of Congress to place a premium on taxpayer opposition to prior Service rulings and to penalize those who did not challenge the IRS. It should be pointed out that the amount of credit on any one poultry facility that was denied in the '70's was generally less than $5,000 -- an amount which did not warrant extensive litigation by individual poultry producers but is nevertheless significant to an individual grower and his family.

There is absolutely no question in our minds that Congress intended the credit be retroactive to taxable years which ended on or after August 15, 1971. We believe that S. 1485 will provide the mechanism for qualified producers to claim the credit to which they are entitled.

I appreciate the opportunity to appear before this Subcommittee today. The poultry and egg associations represented are grateful for this forum to present their views on legislation which, if enacted, should clarify once and for all the intent of Congress with regard to the investment tax credit for poultry houses.

We very strongly urge your favorable consideration of S. 1485.

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**STATEMENT OF JOHN W. KLING, KLING'S LIVESTOCK, INC., WYOMING, DEL., ON BEHALF OF DELAWARE PORK PRODUCERS ASSOCIATION AND NATIONAL PORK PRODUCERS COUNCIL**

Mr. KLING. I am going to read a prepared statement that I have and then I do have a few comments that I would like to make for the record also.

Mr. Chairman, my name is John Kling. I am here today to represent myself, Kling's Livestock Co., Delaware Pork Producers Association, and the National Pork Producers Council. My family and I are involved in a family operation where we raise hogs and cattle. We also process our livestock and market it through Kling Inc.

Gentlemen, the bill before you today is very clear. It gives livestock farmers the right to reclaim investment credit that they were rightfully entitled to. I feel that if we had time to check on some of the small farmers who should have taken advantage of the investment credit but did not, we would find that they were afraid that an audit would lead to a lengthy court battle and large legal fees.

Should these farmers be penalized? I think not. As Delaware's director to the National Pork Producers Council, I can assure you that it is a policy of the National Pork Producers to support investment credit on single purpose livestock facilities and to support Senate bill 1485. I truly hope that Senate bill 1485 will once and for all clarify the issue of investment credit.

Mr. Chairman, I would like to thank you and this committee for allowing me to appear here today. I would like to remind each of you that agriculture in the United States is facing a very critical time. The decisions made today will have a great impact on farmers throughout the country. Gentlemen, I seek your support of Senate bill 1485.

Senator, I would like to bring out one thing. We were involved in this investment credit issue and we have firsthand knowledge of it and in our instance we hire a small tax consulting firm and a bookkeeping system to help us with our work, and at this time at the end of the year I told him we wanted to claim an investment credit on a building for hogs that we had put up, and we sought his advice on this and he went through his—they have a national office where they have tax advisers and people that they seek this information.

They came back to me and said well, you can take it. It is legal to take it, but he said I would advise you that probably you will get audited and you may have to take it to court to get it. So he left it with us. We did take the investment credit, so we are not one of the ones sitting out there looking at not being able to get this investment credit. But I am sure that I know it seems to me that a lot of small farmers would not have taken that route.

They would have gone and just let the investment credit go just to get away from the legal implications or having to take it to court for a few thousand dollars, because it may cost him a few thousand dollars, and then they were not really sure at that time, say in 1978 or 1977, 1979, whether they could have gotten an investment credit at all.

So I think this is the ones it is going to help. It is going to take these people that had a question of whether to take it and allow them to take those credits.

Thank you.

Senator ROTH. Thank you.

Mr. Wright.

STATEMENT OF JOHN KLING

on behalf of

Delaware Pork Producers Association and the National Pork Producers Council

before the

Subcommittee on Taxation and Debt Management

Senate Committee on Finance

May 2, 1982

Re: S. 1485

Mr. Chairman, my name is John Kling. I am here today to represent myself, Kling's Livestock, Inc., Delaware Pork Producers Association and the National Pork Producers Council.

My family and I are involved in a family operation where we raise hogs and cattle. We also process our livestock and market them through Kling's Meats, Inc.

Gentlemen, the bill before you today is very clear. It gives the livestock farmers the right to reclaim investment credit that they were rightfully entitled to. I feel that if we had time to check on some of the small farmers who should have taken advantage of the investment credit but didn't, we would find that they were afraid that an audit would lead to a lengthly court battle and large legal fees. Should these farmers be penalized? I think not.

As Delaware Director to the National Pork Producers Council, I can assure you that it is the policy of the National Pork Producers to support investment credit on single purpose livestock facilities and to support Senate Bill 1485. I truly hope that Senate Bill 1485 will once and for all clarify the issue of investment credit.

Mr. Chairman, I would like to thank you and the Subcommittee for allowing me to appear here today. I would like to remind each of you that agriculture in the United States is facing very critical times. The decisions made today will have a great impact on farmers throughout the country.

Gentlemen, I seek your support of Senate Bill 1485.

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## STATEMENT OF C. B. WRIGHT, CRANBURY, N.J., ON BEHALF OF THE SOCIETY OF AMERICAN FLORISTS

Mr. WRIGHT. Thank you. I am Christopher B. "Chip" Wright, chairman of N. H. Wright, Inc., in Cranbury, N.J. We are a family-owned business, started by my father in 1925. We have 3 acres of greenhouses within which we grow roses and we also grow an acre of standard chrysanthemums. I myself have been involved in the business for 21 years. I am an elected member of the Society of American Florists Growers Council, a board of 12 commercial floricultural growers, elected from a membership of more than 900 growers who produce approximately 90 percent of the flowers and plants grown in the United States.

The society's membership also includes more than 6,000 wholesale and retail firms which are small businesses receiving, distributing and selling products that we grow. The Society of American Florists, SAF, was organized in 1884 and incorporated by an act of Congress in 1901 as a nonprofit trade association. In total, nearly 95 percent of the commercial floricultural industry is represented by the society through direct membership or affiliation.

Our industry is one of small business engaged in growing flowers and plants. Several factors are presently testing our industry's ability to stay in business—rising labor and energy costs, increased foreign competition, higher minimum wages and social security taxes, high interest rates, and inflation. My fellow growers and I cannot expect to be in business very much longer if these problems continue.

I come before the subcommittee today to ask your favorable consideration on an issue which can help us all continue to enjoy flowers and plants in the coming years. The investment tax credit authorized in 1978 for single purpose agricultural and horticultural structures meant hundreds of thousands of dollars for the commercial floriculture industry. For my business alone, the investment tax credit meant nearly $80,000, money which allowed me to modernize and expand my operation and therefore to create more jobs and to more effectly meet the competition in the marketplace.

However, many small businesses in our industry which qualified for this credit never received it. As history, let me briefly take you back to 1971 when Congress authorized the investment tax credit for certain equipment. At that time many of our growers sought this credit for their greenhouses; others, for whatever reason, did not. For those who filed, some regional IRS offices did not question the credit, but others denied it. In those denials the IRS interpretation was that they could not seek this credit for a greenhouse.

In 1978, though, Congress said that the IRS was wrong. Those growers who appealed and kept their cases open received the credit. Those who did not lost the opportunity to receive the credit for the years 1971 to 1975, because of the 3 year statute of limitations.

Senator ROTH. Could I just interrupt for a second? I would like to acknowledge and thank Ed Ralph for being here today. He does an excellent job of representing the Delmarva Poultry Institute. It is nice to have you here, Ed.

Please proceed.

Mr. WRIGHT. This money is rightfully theirs. They were just following the instructions of the IRS. Nothing that they did personally precluded them from qualifying for this credit. Their competitors received it and were able to expand their facilities just as Congress intended.

These competitors were larger businesses, a bit more sophisticated and, frankly, having the money, in many cases, to retain legal counsel and to assist them. It is the small grower—the one who did not and probably still does not have these resources—who has been left out. More than likely, he felt somewhat intimidated by the IRS. He figured he probably did not have a chance of collecting and had to move on to the important issue at hand—running his day-to-day business—supplemented only by members of his immediate family and a few other employees.

These are growers who need this credit more than anyone. They are the very backbone of commercial floriculture and the American agricultural economy in general. By allowing these growers the opportunity to file for this credit, the Congress will not only generate much needed capital for these businesses to expand and thrive but also give them a vote of confidence.

By positively responding to this issue, Congress will show small agricultural businesses that you do indeed care about their future and survival. Unfairly denying this credit to qualified businesses is inconsistent with the intent of the Revenue Act of 1978. Just because a grower did not anticipate the extension of the investment tax credit for his greenhouses and he either did not apply or allowed his case to be closed because he felt he did not have a chance against that anonymous big Government in Washington, are not reasons enough to discriminate against this one segment of our industry.

I respectfully urge that the subcommittee favorably report S. 1485 to the full Finance Committee and hope in its ultimate wisdom that the Congress will provide this needed tax credit for America's flower growers.

I appreciate the opportunity to appear before you today and would welcome any questions or comments.

[The prepared statement of Mr. Wright follows:]

CHRISTOPHER B. WRIGHT

SUMMARY OF WRITTEN TESTIMONY

The Society of American Florists (SAF) is a nonprofit national trade association representing nearly 95 percent of the commercial floricultural industry. The industry is comprised of small businesses which grow flowers and plants.

In 1971 Congress authorized the investment tax credit for certain equipment. The Internal Revenue Service (IRS) interpretation of this law was not consistent and often was interpreted that growers of floricultural crops could not seek this credit for a greenhouse.

In 1978 Congress said that the IRS was wrong. Greenhouses used for growing floricultural crops were, indeed, eligible for the investment tax credit.

Because of the three-year statute of limitations, many growers were not allowed the opportunity to recapture the investment tax credit for the years 1971 to 1975. This is money that is rightfully theirs.

These growers need this credit more than anyone. They are the very backbone of commercial floriculture and the American agricultural economy, in general.

By positively responding to this issue, Congress will show small agricultural business that they, indeed, care about their future and very survival. Unfairly denying this credit to qualified businesses is inconsistent with the intent of the Revenue Act of 1978.

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STATEMENT OF THE SOCIETY OF AMERICAN FLORISTS REGARDING S.1485
BEFORE THE SENATE FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

MAY 21, 1982

The Society of American Florists (SAF) was organized in 1884 and incorporated by an Act of Congress in 1901 as a nonprofit trade association. Its membership includes more than 900 floricultural growers producing approximately 90 percent of the flowers and plants grown in the United States and 7,000 wholesalers and retailers which are small businesses receiving distributing, and selling floriculture products. In total, nearly 95 percent of the floriculture industry is represented by the Society through direct membership or affiliation.

Several factors are presently testing the industry's ability to stay in business. These factors include inflation, rising labor and energy costs, and increased foreign competition, coupled with government action such as the rising minimum wage, dramatic increases in social security and other payroll taxes. These problems impact most heavily on small businesses, such as the members of the Society, which are least able to cope with them.

In 1978, at the urging of the Society of American Florists, Congress saw fit to clarify the definition of eligible structures under the investment tax credit provisions restored in 1971. This clarification took the form of an amendment to Section 48 of the Code in which greenhouses or "single purpose horticultural structures" were determined eligible structures for the investment tax credit. In fact, Congress went one step further by

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finding greenhouses eligible structures effective for tax years that ended after August 15, 1971. In doing so, Congress left no doubt that greenhouses always should have been identified as structures eligible for the investment tax credit.

Historically, within our industry since 1971, some regional IRS offices did not question the eligibility of greenhouse investment tax credit, but others denied it. In those instances, the IRS interpretation was that the floricultural growers could not seek the investment tax credit for greenhouses.

Those growers who appealed, and kept their cases open, received the credit after Congress' favorable action in 1978. Those growers who had not appealed their case, or had not claimed the tax credit due to knowledge of the IRS interpretation, lost the opportunity to receive the credit for the years 1971 to 1975 because of the three year statute of limitation.

This money is rightfully theirs. The growers were just following the instructions of the IRS. Nothing they did personally precluded them from qualifying for this credit. Their competitors received it and were able to expand their facilities just as Congress intended.

The competition, perhaps, was a little larger, a bit more sophisticated, and frankly, had the money, in many cases, to retain legal counsel to assist them.

It's the small grower, the one who didn't, and probably still doesn't, have these resources, who has been left out.

Since 1971, we have witnessed varied IRS reactions to credit claims on greenhouses by growers. This has created an atmosphere of confusion for many. To forego any further expense

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in time and money, by our industry and by the government, we ask that you support S.1485 allowing the investment tax credit for single purpose agricultural or horticultural structures. Credit or refund should be allowed without regard to the statute of limitations for certain taxable years for a period of one year after date of enactment.

By allowing these growers the opportunity to file for this credit, the Congress will not only generate much needed capital for these businesses to expand and thrive, but also give them a vote of confidence.

Unfairly denying this credit to qualified businesses is inconsistent with the intent of the Revenue Act of 1978.

Enactment of this bill has a potential of hundreds of thousands of dollars to growers of floriculture products and several million dollars more to other agricultural growers. This cash flow would certainly help maintain and expand our production capacity, maintain and create jobs and be consistent with the goals of the Reagan Administration. The money we are seeking in the form of the investment tax credit was invested in good faith and denied by erroneous interpretations. This is a financial stimulant we desperately need.

Senator ROTH. Thank you very much. Mr. Geske.

**STATEMENT OF ALVIN J. GESKE, DAVIS & McLEOD, WASHINGTON, D.C., ON BEHALF OF THE UNITED EGG PRODUCERS**

Mr. GESKE. I am Alvin J. Geske, appearing on behalf of the United Egg Producers. UEP is a national federation of egg marketing cooperatives whose members include commercial shell egg producers in every State of the United States except Alaska and Hawaii. Through its regional affiliates, UEP represents approximately 850 producers, accounting for approximately 65 percent of egg production in the United States.

UEP supports S. 1485 and appreciates your continuing interest in this legislation, Senator Roth. I think that you probably stated the case as well as anybody could for this legislation. This legislation is needed because certain producers did not have the statute of limitations open for certain back years when the Revenue Act of 1978 was enacted.

These persons are generally small producers with limited investment in eligible property. They are persons who either did not claim the credit on their tax returns in reliance on the position of the IRS or could not afford to litigate the issue when the IRS disallowed the credit on audit.

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The enactment of S. 1485 would remove the financial disadvantage for these small producers and would put them in essentially the same position as their larger competitors, who had access to more sophisticated tax advice and who could afford to litigate. Although UEP recognizes the need for finality in tax matters generally, fundamental fairness requires that the statute of limitations be opened in this instance.

This instance is different than a number of other instances where the statutes of limitations was not opened because here the affected taxpayers were denied the credit because of the IRS's erroneous interpretation of the law—an erroneous interpretation that has been retroactively corrected for most taxpayers.

The problem in many of these situations is that where relatively small amounts are involved, the IRS can effectively go its own way regardless of congressional intent and a taxpayer just cannot afford to litigate this for $1,000 or $500 of credit. Speaking as a lawyer, I would have to tell the client that it would not be cost effective.

Thank you.

[The prepared statement of Mr. Geske follows:]

SUMMARY OF STATEMENT

OF

UNITED EGG PRODUCERS

ON

S. 1485

The United Egg Producers supports S. 1485. This bill should be enacted because it would permit farmers to obtain the investment tax credit on single purpose agricultural structures placed in service between 1971 and 1978 even though the statute of limitations had run for the taxable years involved when Congress clarified the law in 1978. The persons who would be benefited by S. 1485 are generally small producers with limited investment in eligible property. In general, these taxpayers either did not claim the credit on their tax returns in reliance on the position of the Internal Revenue Service or could not afford to litigate the issue when the IRS disallowed the credit on audit. Enactment of S. 1485 would remove a financial disadvantage these small farmers have suffered and would put them in essentially the same position as their larger competitors who had access to more sophisticated tax advice and who could afford to litigate.

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STATEMENT

OF

UNITED EGG PRODUCERS

ON

S. 1485

The United Egg Producers ("UEP") strongly supports S. 1485 and wishes to thank Senator Roth for his continuing interest in this legislation which would insure that certain small egg producers are not deprived of the investment tax credit for single purpose agricultural structures by reason of technical rules relating to the statute of limitations.

UEP is a national federation of egg marketing cooperatives whose members include commercial shell egg producers in every state of the United States except Alaska and Hawaii. There are four regional egg marketing cooperative members affiliated with UEP and their members are all independent egg producers. The majority of these producers are small independent businesses. Through its regional affiliates, UEP represents approximately 850 producers accounting for approximately 65 percent of egg production in the United States.

S. 1485 would open the statute of limitations for otherwise closed years so that a taxpayer could claim the investment tax

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credit on a single purpose agricultural structure if a claim is filed within one year of the date of enactment of the legislation. This bill seeks to correct an inequity which occurred because Congress did not open the statute of limitations when it enacted the provisions of the Internal Revenue Code relating to the investment tax credit for single purpose agricultural structures in 1978.

While UEP recognizes the need for finality in tax matters generally, an examination of the background of the rules relating to the investment tax credit for single purpose agricultural structures demonstrates that equity requires the opening of the statute of limitations in the circumstances presented here. In 1971, Congress restored the investment tax credit which had been repealed in 1969. In its report on the Revenue Act of 1971, the Committee on Finance specifically stated that single purpose agricultural structures were to be considered special purpose structures which would qualify for the investment tax credit, and would not be considered buildings. The Internal Revenue Service, however, effectively rejected this language by applying a restrictive interpretation to the eligibility of single purpose farm structures on a case-by-case basis. The IRS approach was rejected, and the interpretation of the Committee on Finance was adopted, by the United States Tax Court in the case of Melvin



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Satrum, 62 T.C. 413 (1974), a case of additional significance because it was reviewed by the full Tax Court.

Notwithstanding the committee report and the court decision, the IRS refused to accept the position that single purpose agricultural structures were eligible for the credit. It continued to litigate this issue and, except for one case, was generally unsuccessful in its litigating efforts. IRS publications and instructions accompanying IRS forms reflected its position so that persons relying on these matters in preparing their tax returns would not have claimed the investment credit on these structures.

In 1978, Congress amended the Code to specify that structures or enclosures for single purpose livestock or plant production are eligible for the investment tax credit. Because Congress recognized that this was a clarification of existing law, the provision was made retroactive -- to apply to taxable years which ended on or after August 15, 1971. The report of the Committee on Finance expressly indicated that the Committee was affirming the position it had taken in 1971 that the credit as restored was to apply to single purpose agricultural structures. The Committee also noted that: "[t]axpayers' litigation to establish their right to these credits is both expensive and troublesome, particularly in cases involving small farmers with



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limited amounts of eligible property." (S. Rept. No. 95-1263, 95th Cong. 2d Sess., 116 (1978).) However, the Revenue Act of 1978 did not explicitly open up the statute of limitations. Consequently, certain taxpayers who had not obtained the investment tax credit on single purpose agricultural structures for prior years were unable to file amended returns to claim this credit because the statute of limitations on these refunds had expired. In general, two groups of taxpayers were denied the investment tax credit for these years by reason of this rule. One group of taxpayers who did not obtain the credit consists of taxpayers who had followed the IRS instructions that single purpose agricultural structures did not qualify and had not claimed the investment tax credit on their returns. The second group of taxpayers who did not obtain the credit consists of taxpayers who had claimed investment tax credit on these structures but had the credit disallowed on audit and decided not to litigate because the cost of litigation exceeded the amount of the credit. As noted above, in 1978, the Committee on Finance specifically recognized that litigation to obtain the credit was both expensive and troublesome especially for small farmers with limited amounts of eligible property.

Both these groups who have been unable to utilize the investment tax credit on single purpose agricultural structures are comprised of smaller businesses who cannot afford



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sophisticated tax advice and whose investment would be sufficiently small that it would not be cost effective to litigate the investment tax credit issue. Although we do not have any specific information as to how many (or which) egg producers would be benefited by S. 1485, it appears clear that the large egg producers were all able to obtain investment tax credit on these structures, and the beneficiaries of the bill would almost certainly be small producers with limited amounts of eligible property.

In conclusion, UEP supports S. 1485 because (1) it is consistent with the basic intent of the 1978 legislation to clarify the availability of the credit to single purpose agricultural structures on a retroactive basis and (2) it would result in uniform tax treatment of investment in single purpose agricultural structures.

Senator ROTH. Thank you. I appreciate all three of you gentlemen coming forward today because this legislation is of significance to many agricultural pursuits. Obviously the pork industry and eggs, as well as florists and, I might say, the mushroom producers back home would be involved. I do not have any questions, gentlemen. You have heard me already make my comments that I think it is just a matter of fairness, of equity, particularly to the small producer who often does not have the tax specialist at his elbow to recommend what he should do.

So, I am hopeful that we will be successful in correcting this inequity. Thank you very much for being here today.

At this time I would like to call forward the next panel, consisting of Mr. Knight, Mr. Moyer, Mr. Ams, and Mr. Koelemij. Gentlemen, I welcome you and appreciate your being here to address a matter which I think is of critical importance to the housing industry. I am delighted that we have with us you, Bob Moyer, from my State of Delaware, who for many years has been on the forefront of this battle to provide housing for our people, and I would also like to welcome you, Mr. Knight, the commissioner of the city of Wichita, Kans., who is here to represent the National League of Cities.

Bob Moyer is here to represent the Council of State Housing Agencies. Mr. Jack Ams represents the National Association of Realtors, and Mr. Koelemij is vice president and secretary of the National Association of Home Builders.

Gentlemen, I apologize to you for the lateness of the hour, but unfortunately, as most of you know, that is not unusual. As you know, I introduced S. 2425 with the aim of facilitating the ability of both State and local governments to issue mortgage revenue bonds

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to create capital for single family home mortgages at below market rates.

I believe that this legislation is necessary as restrictions were placed on these bonds last year in the reconciliation bill that severely limited the ability of State and local governments to issue these bonds to a point where nearly all mortgage bond issues have been made possible only with a cash contribution on the part of the issuer, and there are many areas and many States and many cities that cannot do that.

It seems to me at a time when housing starts are at the lowest point since World War II that it does not make much sense to bar a program which precludes home ownership possibilities and in which virtually every State has had some experience.

On the matter of achieving a workable mortgage revenue program, I would point out that the miscellaneous tax bill, 4717, which passed last December, did contain some modifications which may, if enacted with appropriate conference report language, provide for a workable program. I think the conferees—at least I have urged the conferees to meet this week and I think they are supposed to meet today, although the budget problems may make that very difficult.

Anyway, I would hope that the conferees will take the action necessary to put a viable mortgage revenue bond program in place immediately and if they fail, then I think my legislation becomes particularly important. Today we have, as I said, a distinguished panel and I am pleased to welcome, again, each one of you. I will let you decide who proceeds in what order.

I would ask, if you can, to summarize your statements.

## STATEMENT OF ROBERT KNIGHT, COMMISSIONER, CITY OF WICHITA, KAN., ON BEHALF OF THE NATIONAL LEAGUE OF CITIES

Mr. KNIGHT. Senator, I am Bob Knight, city commissioner from Wichita, Kans. First of all, we want to sincerely thank you for taking the initiative to introduce this legislation and for your many behind-the-scenes efforts to work out compromises and solutions on this issue of mortgage revenue bonds.

The National League of Cities continues to support controlled use of MRB's, and I hasten to emphasize the word "controlled". If MRB's were once again allowed to be issued unchecked, their volume would quickly overload the market similar to the present threat to the viability of the market posed by industrial development bonds.

As you well know, when the tax exempt market becomes overburdened, interest rates are driven up and bonds for traditional purposes are crowded out. We are not here to reopen the flood gates of mortgage revenue bonds. Instead, we seek only modest changes in the mortgage subsidy bond tax act that will make this program work without resorting to gimmicks.

In our opinion, S. 2425 is a responsible proposal which follows that philosophy. Frankly, we hoped we would not have to be here today and that there would not be a need for this hearing. That is because we thought that the conference on H.R. 4717, the Miscella-

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neous Tax bill that you alluded to, which was passed by both the House and the Senate last year, would have been completed by now and the provisions related to MRB's agreed to.

As far as the National League of Cities is concerned, we can live with what is in H.R. 4717 on MRB's. We do not mean to diminish the importance of S. 2425, but obviously the easiest way out of this impasse on this issue is to get the conferees on H.R. 4717 to agree to the Senate provisions on MRB's with subsequent approval by both Houses. Nevertheless, since we do not know if or when that will ever occur, even though the conference has begun, we must proceed with other legislative alternatives in the event a compromise on H.R. 4717 fails.

I want to turn now very briefly to some of the problems that issuers have had in attempting to issue MRB's under the permanent rules and to the provisions of S. 2425 that will alleviate those problems. My longer statement, Senator, as you are well aware, has been provided to you in its entirety, and covers these difficulties in greater detail.

Before doing that, however, I want to reaffirm and not fail to mention the number one problem that supercedes all others, and that is high interest rates. Even if there were no difficulties in making MRB programs work on a technical basis, there would still be the policy question of whether we are really doing a family a favor by giving them a mortgage at 12- or 13-percent interest. NLC believes that a modest easing of the monetary supply, which would not bring about a resurgence of inflation, is now in order. It would help to bring the country out of the recession and help such troubled industries as housing.

The issue that has drawn the most attention is the 1 percent arbitrage limit. The tax writing committees were right 2 years ago to lower the 1½ percent arbitrage ceiling, but lowering it all the way to 1 percent with the very tight definitions on what must be counted in the spread may have been too restrictive. Most issues so far under the permanent rules have been possible only because issuers or developers have contributed sizeable sums of money from various resources to these projects.

This practical requirement of contributing funds discriminates against those cities that are hardpressed financially and do not have the sums of money needed to make their projects feasible. Our recommendation is to raise the current arbitrage limit but to do so on a sliding scale basis to recognize that more arbitrage is needed the smaller the issue. The maximum limit is still difficult to determine, but we think it should be no higher than 1¼ percent.

Congress may also want to add a feature that would require arbitrage profit left over at the end of an issue to be rebated to the Treasury or used for housing. For those issues that employ gimmicks such as mortgage forgiveness, step-down mortgages, or junior-senior bonds, there is no need to raise the limit from one percent.

There are many issues that are being addressed in your proposed legislation, and I think in order to avoid redundancy, I will let the other witness speak on those issues. We sincerely appreciate your courtesy and this opportunity to testify.

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Senator ROTH. Thank you, Mr. Knight. I am very pleased to have Senator Mitchell here. I think he has a statement that he would like to make at this time.

Senator MITCHELL. Thank you, Senator Roth. I want to thank the witnesses for their indulgence. I am pleased that this hearing has been called to receive testimony in support of several bills, particularly your legislation, Senator, S. 2425, which would amend the Mortgage Subsidy Bond Tax Act of 1980.

I believe the restrictions imposed on the use of mortgage revenue bonds in that act must be lifted to enable bond issuers to make better use of this effective financing instrument. The housing industry is in the middle of a depression. It is not a recession for the housing industry. It is a depression. Congress must act to alleviate the situation.

On March 24 I introduced legislation which, in addition to providing a tax credit for first-time homebuyers, contains three of the provisions which are in your bill. Specifically, it would raise the arbitrage limit from the current 1 percent rate to 1.25 percent. It would raise the purchase price limitation from 90 percent to 110 percent of the average area sales price in nontargeted areas. This would allow more homes to qualify for financing under a mortgage revenue bond program and increase the number of families who could participate.

Finally, it would dilute slightly the current requirement that bond proceeds be used to aid only first-time homebuyers. Twenty percent of bond proceeds could, under the proposal, help existing homeowners. The remaining families would either have to be first-time homebuyers, families who move from substandard housing to homes that meet local minimum property standards or those who owned a home that could no longer be occupied because of a natural disaster or Government action.

Those of us who are interested in the easing of restrictions on mortgage revenue bonds have been waiting in anticipation of conference action on a separate piece of legislation, H.R. 4717, the Miscellaneous Revenue Act of 1981, passed last December. The Senate version of that bill contains important amendments affecting bonds for both single family and multifamily housing.

I understand the conferees met 2 days ago and I hope they will soon agree on the needed improvements in this area. If the members of the conference are unable to come up with a single bill soon, it is my hope that we will find another vehicle to get these essential changes enacted into law quickly, whether by individual legislation or through an amendment of some other bill.

I welcome the support of my many colleagues who have joined with you, Senator, in this area—Senators Durenberger, Long, Sasser, and many others—on a issue so vital to the housing industry and I look forward to the testimony to be received from these witnesses today, representing important national groups.

In conclusion, let me just say that housing has led the country out of a recession in the past. It can do so, indeed it must do so, again. We have a responsibility to every American whose dream of owning a home has been frustrated by high interest rates and to those in the various segments of the housing and lumber industries who depend upon a healthy housing market for their livelihood.

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Thank you, Mr. Chairman, for your courtesy, and I will be pleased now to hear the testimony of the other witnesses.

Senator ROTH. Thank you, Senator Mitchell.

[The statements of Senator Mitchell and Robert Knight follow:]

STATEMENT OF SENATOR GEORGE J. MITCHELL

Senator Roth, I am pleased that this hearing has been called to receive testimony in support of several bills, in particular your legislation, S. 2425, which would amend the Mortgage Subsidy Bond Tax Act of 1980. I believe the restrictions imposed on the use of mortgage revenue bonds in that Act must be lifted so as to enable bond issuers to make better use of this effective financing instrument. The housing industry is in the midst of a depression and Congress must act to alleviate the situation.

On March 24th, I introduced legislation which, in addition to providing a tax credit for first-time homebuyers, contains three of the provisions in Senator Roth's Legislation. Specifically, it would raise the arbitrage limit from the current 1 percent rate to 1.25 percent; second, it would raise the purchase price limitation from 90 percent to 110 percent of the average area sales price in nontargeted areas. This would allow more homes to qualify for financing under a mortgage revenue bond program and increase the number of families who could participate. Finally, it would dilute slightly the current requirement that bond proceeds be used to aid only first-time homebuyers. Twenty percent of bond proceeds could, under the proposal, help existing home owners; the remaining families would either have to be first-time homebuyers, families who moved from substandard housing to homes that meet local minimum property standards, or those who owned a home that could no longer be occupied because of a natural disaster or government action.

Those of us who are interested in the easing of restrictions on mortgage revenue bonds have been waiting in anticipation of conference action on a separate piece of legislation, H.R. 4717, the Miscellaneous Revenue Act of 1981, passed last December. The Senate version of that bill contains important amendments affecting bonds for both single family and multifamily housing.

I understand the conferees met two days ago, and I hope they will soon agree on the needed improvements in this area. If the members of the conference are unable to come up with a single bill soon, it is my hope that we will find another vehicle to get these essential changes enacted into law quickly, whether by individual legislation or through some other bill.

I welcome the support of my colleagues, Senators Roth, Durenberger, Long, Sasser and others, on this issue so vital to the housing industry. I also welcome the testimony to be received today from representatives of the National Association of Realtors, the National Association of Home Builders, the National League of Cities and the Council on State Housing Agencies.

Housing has led the country out of a recession in the past, and it can do so again. We have a responsibility to those whose dream of owning a home has been frustrated by high interest rates, and to those in the various segments of the housing and lumber industries who depend on a healthy housing market for their livelihood.

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STATEMENT
OF
ROBERT KNIGHT, COMMISSIONER, WICHITA, KANSAS
FOR THE
NATIONAL LEAGUE OF CITIES
MAY 21, 1982

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM ROBERT KNIGHT, COMMISSIONER IN WICHITA, KANSAS, AND VICE-CHAIRMAN OF THE NATIONAL LEAGUE OF CITIES' FINANCE, ADMINISTRATION, AND INTERGOVERNMENTAL RELATIONS POLICY COMMITTEE. I APPRECIATE YOUR GIVING ME THIS OPPORTUNITY, ON BEHALF OF NLC AND THE 15,000 CITIES IT REPRESENTS, TO PRESENT THE VIEWS OF CITY OFFICIALS ON DIFFICULTIES IN ISSUING MORTGAGE REVENUE BONDS AND, MORE SPECIFICALLY, ON S. 2425 BY SENATOR WILLIAM V. ROTH, JR. (R-DEL.), WHICH WOULD EASE THE RESTRICTIONS IN CURRENT LAW ON ISSUING THESE BONDS.

LET ME BEGIN BY THANKING SENATOR ROTH FOR TAKING THE INITIATIVE TO INTRODUCE THIS LEGISLATION AND FOR YOUR MANY BEHIND-THE-SCENES EFFORTS TO WORK OUT COMPROMISES AND SOLUTIONS ON THIS ISSUE OF MORTGAGE REVENUE BONDS. NLC RECOGNIZES THE WORK YOU HAVE DONE, AND WE APPRECIATE YOUR CONTINUING INTEREST IN SEEING THAT MORTGAGE BONDS CAN BE USED EFFECTIVELY IN ADDRESSING AT LEAST A PART OF THE HOUSING NEEDS OF THE NATION'S CITIES.

NLC CONTINUES TO SUPPORT CONTROLLED USE OF MRB'S, AND I HASTEN TO EMPHASIZE THE WORD "CONTROLLED." IF MRB'S WERE ONCE AGAIN ALLOWED TO BE ISSUED UNCHECKED, THEIR VOLUME WOULD

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QUICKLY OVERLOAD THE MARKET, SIMILAR TO THE PRESENT THREAT TO THE VIABILITY OF THE MARKET POSED BY INDUSTRIAL DEVELOPMENT BONDS. AS YOU WELL KNOW, WHEN THE TAX-EXEMPT MARKET BECOMES OVER-BURDENED, INTEREST RATES ARE DRIVEN UP AND BONDS FOR TRADITIONAL PURPOSES ARE CROWDED OUT.

BUT, WE ARE NOT HERE TO REOPEN THE FLOODGATES OF MORTGAGE REVENUE BONDS. WE DO NOT SEEK WHOLESALE CHANGES IN THE MORTGAGE SUBSIDY BOND TAX ACT, WHICH WOULD NOT BE RESPONSIBLE IN VIEW OF THE TREMENDOUS PRESSURES ON THE TAX-EXEMPT BOND MARKET. INSTEAD, WE SEEK ONLY MODEST CHANGES IN THE LAW THAT WILL MAKE THIS PROGRAM WORK WITHOUT RESORTING TO GIMMICKS. IN OUR OPINION, S. 2425 IS A RESPONSIBLE PROPOSAL WHICH FOLLOWS THAT PHILOSOPHY.

FRANKLY, WE HOPED WE WOULDN'T HAVE TO BE HERE TODAY AND THAT THERE WOULD BE NO NEED FOR THIS HEARING. THAT IS BECAUSE WE THOUGHT THAT THE CONFERENCE H.R. 4717, A MISCELLANEOUS TAX BILL PASSED BY BOTH THE HOUSE AND THE SENATE LAST YEAR, WOULD HAVE BEEN COMPLETED BY NOW AND THE PROVISIONS RELATING TO MORTGAGE REVENUE BONDS AGREED TO. AS YOU KNOW, THE SENATE INCLUDED IN ITS VERSION OF THAT BILL FOUR PROVISIONS PERTAINING TO MRB'S THAT WERE WORKED OUT BY ALL OF THE PARTIES INTERESTED IN THIS ISSUE. THOSE SAME FOUR PROVISIONS ARE NOW CONTAINED IN S. 2425.

AS FAR AS NLC IS CONCERNED, WE CAN LIVE WITH WHAT IS IN H.R. 4717 ON MRB'S. WE THOUGHT THOSE PROVISIONS WERE GOOD LAST YEAR WHEN THEY WERE PASSED, AND THEY ARE STILL GOOD TODAY. WE DO NOT MEAN TO DIMINISH THE IMPORTANCE OF S. 2425, BUT OBVIOUSLY THE EASIEST WAY OUT OF THIS IMPASSE ON THIS

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ISSUE IS TO GET THE CONFEREES ON H.R. 4717 TO AGREE TO THE SENATE PROVISIONS ON MRB'S WITH SUBSEQUENT APPROVAL BY BOTH HOUSES. NEVERTHELESS, SINCE WE DO NOT KNOW IF OR WHEN THAT WILL EVER OCCUR, EVEN THOUGH THE CONFERENCE HAS BEGUN, WE MUST PROCEED WITH OTHER LEGISLATIVE ALTERNATIVES IN THE EVENT A COMPROMISE ON H.R. 4717 FAILS.

I WANT TO TURN NOW TO THE PROBLEMS THAT ISSUERS HAVE HAD IN ATTEMPTING TO ISSUE MRB'S UNDER THE PERMANENT RULES AND TO THE PROVISIONS OF S. 2425 THAT WILL ALLEVIATE THOSE PROBLEMS. BEFORE DOING THAT, THOUGH, I CANNOT FAIL TO MENTION THE NUMBER ONE PROBLEM THAT SUPERCEDES ALL OTHERS AND THAT HAPPENS TO BE THE NUMBER ONE PROBLEM OF THE NATION, AS WELL--HIGH INTEREST RATES. EVEN IF THERE WERE NO DIFFICULTIES IN MAKING MRB PROGRAMS WORK ON A TECHNICAL BASIS, THERE WOULD STILL BE THE OBSTACLE OF HIGH INTEREST RATES. WE HAVE TO ASK OURSELVES THE POLICY QUESTION OF WHETHER WE ARE REALLY DOING A FAMILY A FAVOR BY GIVING IT A MORTGAGE LOAN AT 12-13 PERCENT INTEREST, EVEN IF THAT IS BELOW THE CURRENT MARKET RATES.

AS PART OF NLC'S ALTERNATIVE BUDGET PROPOSALS THAT WE DEVELOPED IN FEBRUARY, WE ADVOCATED A MODEST EASING OF THE MONETARY SUPPLY. WE KNOW THAT ANY MORE THAN A "MODEST EASING" WOULD BRING ABOUT A RESURGENCE OF INFLATION, WHICH NONE OF US WANT. BUT SOME HELP FROM THE FEDERAL RESERVE BOARD, WE BELIEVE, WOULD HELP BRING THE COUNTRY OUT OF THE RECESSION AND HELP SUCH TROUBLED INDUSTRIES AS HOUSING.

ARBITRAGE

WITH RESPECT TO THE PROBLEMS OF THE MORTGAGE SUBSIDY BOND TAX ACT, THE ISSUE THAT HAS DRAWN THE MOST ATTENTION IS THE ONE-PERCENT ARBITRAGE LIMIT. THE TAX-WRITING COMMITTEES WERE RIGHT TWO YEARS AGO TO LOWER THE 1.5 PERCENT ARBITRAGE CEILING, BUT LOWERING IT ALL THE WAY TO 1 PERCENT WITH VERY TIGHT DEFINITIONS ON WHAT MUST BE COUNTED IN THE SPREAD MAY HAVE BEEN TOO RESTRICTIVE. THE CASH FLOWS UNDER THESE RESTRICTIONS DO NOT ALLOW MOST ISSUERS TO HAVE SUFFICIENT REVENUES TO OPERATE THE PROGRAMS, AS WELL AS RECEIVE FAVORABLE BOND RATINGS. CONSEQUENTLY, MOST ISSUES SO FAR UNDER THE PERMANENT RULES HAVE BEEN POSSIBLE ONLY BECAUSE ISSUERS OR DEVELOPERS HAVE CONTRIBUTED SIZABLE SUMS OF MONEY FROM VARIOUS RESOURCES TO THESE PROJECTS. IN MANY CASES THESE WILL BE ONE-TIME-ONLY DEALS BECAUSE ADDITIONAL RESOURCES WON'T BE AVAILABLE FOR FUTURE ISSUES. IN ADDITION, THIS PRACTICAL REQUIREMENT OF CONTRIBUTING FUNDS DISCRIMINATES AGAINST THOSE CITIES THAT ARE HARD-PRESSED FINANCIALLY AND DO NOT HAVE THE SUMS OF MONEY NEEDED TO MAKE THEIR PROJECTS FEASIBLE.

YOU SHOULD BE AWARE, THOUGH, THAT SOME ISSUES HAVE BEEN MADE WITHOUT ADDITIONAL CONTRIBUTIONS FROM THE ISSUER AND WITHIN THE 1-PERCENT ARBITRAGE LIMIT USING TECHNIQUES SUCH AS "MORTGAGE FORGIVENESS," STEP-DOWN MORTGAGES, OR JUNIOR-SENIOR BOND ARRANGEMENTS. FOR EXAMPLE, UNDER A MORTGAGE FORGIVENESS SCHEME, THE BUYER IS CHARGED 4 OR 5 "POINTS" TO COVER NON-ASSET BOND COSTS. USING LIBERAL "CALL" PROVISIONS ON THE BONDS, IT IS POSSIBLE TO STRUCTURE A DEAL WHICH WILL TEMPORARILY HAVE EXCESS YIELD BUT WHICH CAN BE REDUCED TO THE ONE-PERCENT

ALLOWED BY FORGIVING MORTGAGE PAYMENTS AT THE END OF THE TERM OF THE ISSUE. WE DO NOT NECESSARILY THINK THIS IS A PRUDENT PRACTICE, BECAUSE IT HURTS LOWER INCOME BUYERS AND TENDS TO DRIVE UP INTEREST RATES ON THE BONDS. IT DOES PROVE, HOWEVER, THAT IT IS POSSIBLE TO LIVE WITHIN THE ONE-PERCENT LIMITATION.

OUR RECOMMENDATION IS TO RAISE THE CURRENT ARBITRAGE LIMIT, BUT TO DO SO ON A SLIDING-SCALE BASIS TO RECOGNIZE THAT THE MORE ARBITRAGE IS NEEDED THE SMALLER THE ISSUE. THE MAXIMUM LIMIT IS STILL DIFFICULT TO DETERMINE, BUT WE THINK IT SHOULD BE NO HIGHER THAN 1¼. CONGRESS MAY ALSO WANT TO ADD A FEATURE THAT WOULD REQUIRE ARBITRAGE PROFIT LEFT OVER AT THE END OF AN ISSUE TO BE REBATED TO THE TREASURY OR USED FOR HOUSING. FOR THOSE ISSUES THAT EMPLOY A GIMMICK, SUCH AS MORTGAGE FORGIVENESS, THERE IS NO NEED TO RAISE THE LIMIT FROM ONE-PERCENT.

FIRST-TIME HOMEBUYER

THE PRESENT LAW SPECIFIES THAT BOND PROCEEDS CAN BE USED ONLY FOR MORTGAGES FOR FIRST-TIME HOMEBUYERS. S. 2425 WOULD LOWER THIS REQUIREMENT TO 80 PERCENT. WE GENERALLY SUPPORT THE NOTION THAT WHEN MRB'S ARE USED TO SUPPORT SINGLE-FAMILY HOUSING, THEY SHOULD BE USED TO ASSIST FAMILIES WHO DO NOT ALREADY OWN THEIR HOMES. HOWEVER, REQUIRING 100 PERCENT OF PROCEEDS TO BE USED FOR FIRST-TIME BUYERS LIMITS FLEXIBILITY. LOWERING THE REQUIREMENT WOULD AID IN TIMELY COMMITMENT OF BOND PROCEEDS AND IN HELPING FAMILIES IN SUBSTANDARD HOUSING OR WHO HAVE BEEN DISPLACED FROM THEIR HOMES.

Purchase Price Limit

S. 2425 would increase the home purchase price limit from 90 percent of the average area purchase price to 110 percent. In 1980 during congressional consideration of the MRB issue, NLC advocated use of income limits as the principle control on who was given these reduced-rate mortgages, and not home purchase price limits as was agreed to. Although we still think income limits are the best approach to proper control, purchase price limits have indirectly controlled the level of income of the familes assisted. Fortunately, most states and many local governments have added their own income limits.

Frankly, we have heard from no cities who believe that raising purchase price limits is an urgent need. They feel that there are more than enough families to be assisted within the current limits.

Registration

While registration of all tax-exempt securities is probably not far away, the only bonds now required to be registered are MRB's (with one other minor excertion). S. 2425 would remove that requirement and NLC supports that provision. We oppose registration requirements on select classes of bonds, because it means higher issuance costs. It has been estimated that the MRB registration requirement has driven up issuance costs by 20 basis points. NLC's objective over the years has been to reduce issuance costs, but the current law has gone in the opposite direction.

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Technical Corrections

Two provisions in S. 2425 are technical corrections in the present law, which should not be controversial. The first would provide that reserves need not be disposed of at a loss in order to comply with the requirement that reserves be reduced as mortgages are paid off. The second would make permanent in the law the definition of low or moderate income persons as being those earning 80 percent or less of area median income. This latter change simply clarifies an ambiguity raised in the Omnibus Reconciliation Act of 1981, which altered the income definition in HUD's Section 8 subsidized housing assistance program.

Multi-Family Housing

NLC has never understood why Congress felt compelled to place any restrictions on tax-exempt bonds used to assist multi-family housing, since few or no abuses have been brought to light and since lower income people generally benefit from an increased supply in rental housing. In addition, the economics of building multi-family rental projects have become so unfavorable in recent years that few projects are built without some type of subsidy. Even so, the law now requires that 20 percent of all units (15 percent in targeted areas) financed with tax-exempt bonds be reserved for persons of low or moderate income for at least 20 years.

For practical purposes, what this requirement means is that there must be a Section 8 subsidy. But this presents two additional difficulties. First, it is impossible to meet the 20-year duration requirement using Section 8 moderate

REHABILITATION FUNDS, BECAUSE THAT PROGRAM HAS A MAXIMUM CONTRACT TERM OF 15 YEARS. SECOND, THE FUTURE OF CONTINUED SECTION 8 ASSISTANCE IS IN DOUBT AND, IF THE PROGRAM SHOULD CONTINUE, FEWER UNITS WILL LIKELY BE AVAILABLE EACH YEAR.

THIS CRITICAL PROBLEM IS ADDRESSED BOTH IN S. 2425 AND IN THE SENATE VERSION OF H.R. 4717 BY ALLOWING THE UNITS FOR LOW AND MODERATE INCOME PERSONS TO BE SET ASIDE FOR THE LONGER OF: (1) 10 YEARS AFTER OCCUPANCY OF THE PROJECT; (2) ONE-HALF THE TERM OF THE OBLIGATION; OR (3) TERMINATION OF SECTION 8 ASSISTANCE. THIS IS A REASONABLE COMPROMISE THAT WILL ALLOW MORE PROJECTS TO GO FORWARD.

I WANT TO POINT OUT, THOUGH, THAT THIS COMPROMISE DURATION REQUIREMENT MAY NOT WORK FOR SMALLER PROJECTS IN WHICH REHABILITATION IS THE OBJECTIVE. IN MY OWN CITY OF WICHITA, WE HAVE CONDUCTED A TAX-EXEMPT REHABILITATION LOAN PROGRAM FOR SMALL RENTAL PROPERTIES WITHOUT SECTION 8 ASSISTANCE. OTHERS HAVE DONE THE SAME. SOME CITIES IN COLD CLIMATES HAVE CONTEMPLATED ENERGY REHABILITATION PROJECTS FOR SMALL MULTI-FAMILY PROJECTS WHICH WOULD RESULT IN SIGNIFICANT SAVINGS IN HEATING AND UTILITY BILLS FOR THE RESIDENTS. MOST ALL OF THESE TYPES OF PROJECTS ARE RENDERED UNDOABLE WHEN COUPLED WITH THE LENGTHY LOW AND MODERATE INCOME OCCUPANCY REQUIREMENT. IT WOULD BE APPROPRIATE TO EXEMPT PROJECTS OF 40 TO 50 UNITS OR LESS UP TO A MAXIMUM LOAN OF PERHAPS $6,5000 TO $7,500 PER UNIT FROM THE DURATION REQUIREMENT.

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ADDITIONAL PROVISIONS

ALTHOUGH THE SCOPE OF THIS HEARING ON THIS ISSUE IS LIMITED TO S. 2425, ALLOW ME TO BRIEFLY MENTION A FEW OTHER PROBLEMS IN UTILIZING MRB'S FOR REHABILITATION OF HOUSING NOT ADDRESSED BY THE BILL.

FIRST IS THE MATTER OF THE $15,000 LIMIT THAT CAN BE SPENT PER PROPERTY FOR HOME IMPROVEMENT LOANS. THIS LIMITATION IS UNREASONABLY LOW WHEN DEALING WITH PROPERTIES THAT HAVE TWO-, THREE-, OR FOUR-UNIT DWELLINGS. THIS LIMIT SHOULD AT LEAST BE DOUBLED, OR TIED TO THE FLEXIBLE FHA TITLE I LOAN LIMITS OF $15,000 FOR ONE-UNIT PROPERTIES OR $7,5000 PER UNIT FOR MULTI-UNIT PROPERTIES.

SECOND, IT IS NOT POSSIBLE UNDER IRS RESTRICTIONS TO REFINANCE RENTAL PROPERTIES IN EXCESS OF 10 PERCENT OF THE BOND ISSUE. WE FIND IT INCONSISTENT THAT REFINANCINGS CAN BE DONE FOR SINGLE-FAMILY, OWNER-OCCUPIED HOUSING BOND PROGRAMS BUT NOT FOR RENTAL PROJECTS. WE RECOMMEND THAT REFINANCINGS BE PERMITTED FOR BOTH TYPES OF PROGRAMS.

CO-OPS

OUR LAST POINT IS THAT IT IS UNCLEAR AS TO WHETHER COOPERATIVE HOUSING SHOULD BE TREATED AS MULTI-FAMILY HOUSING OR SINGLE-FAMILY HOUSING UNDER THE LAW. CITIES WISHING TO DO COOPERATIVE HOUSING PROJECTS HAVE GROWN SO FRUSTRATED THAT THEY NO LONGER REALLY CARE UNDER WHICH CATEGORY IT FALLS. THEY WOULD PREFER THAT IT BE CLASSIFIED AS MULTI-FAMILY HOUSING, BUT WHAT THEY REALLY NEED IT A DECISION.

IN CLOSING, LET ME THANK THE COMMITTEE FOR TAKING THE TIME TO HAVE THIS HEARING TO FOCUS ATTENTION ON THIS ISSUE. WE REALIZE THAT IN THE MIDST OF ALL THE OTHER PRESSING MATTERS FACING YOU RIGHT NOW, IT WOULD HAVE BEEN EASY TO SET THIS ISSUE ASIDE. IF WE CAN GET SOME RELIEF ON THIS MATTER, THOUGH, WE ARE CONVINCED THAT MORTGAGE BONDS CAN SERVE AS AN ECONOMIC STIMULUS AS WELL AS HELP PEOPLE TO OWN, RENT, OR REHABILITATE HOUSING THEY OTHERWISE COULD NOT AFFORD.

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Mr. MOYER.

**STATEMENT OF ROBERT MOYER, DIRECTOR OF THE DELAWARE STATE HOUSING AUTHORITY, ON BEHALF OF THE COUNCIL OF STATE HOUSING AGENCIES**

Mr. MOYER. Thank you, Mr. Chairman and members of the subcommittee. My name is Robert Moyer and I am the director of the Delaware State Housing Authority. I speak before you today as a representative of the Council of State Housing Agencies. The council represents State housing finance agencies in 46 States, the District of Columbia, New York City, and the Commonwealth of Puerto Rico. Affiliate members of the council include builders, investment bankers, developers, and others involved with State housing finance agencies.

I would like to take this opportunity both for myself and the Council of State Housing Agencies to applaud Senator Roth for taking action to provide much-needed legislative relief from the unworkable provisions of the Mortgage Subsidy Bond Tax Act. We also would like to express our appreciation to Chairman Packwood for taking prompt action on the bill.

Although several critical amendments to the Mortgage Subsidy Bond Tax Act were passed by the Senate in December of last year, 5 months have gone by and only this week has the conference committee on the bill carrying those amendments been convened. We strongly encourage the chairman and members of the subcommittee to communicate to Senator Dole, Congressman Rostenkowski, and other members of the conference committee their support for the housing bond amendments.

Although we support that legislation as the most timely means to improve the workability of the Mortgage Subsidy Bond Tax Act, we see Senator Roth's bill as offering a more comprehensive response to the many practical problems created by the 1980 act. Irrespective of conference committee action on the Senate amendments, we strongly encourage the subcommittee to push ahead with Senator Roth's bill.

In the remainder of my testimony, I will overview the impact of the Mortgage Subsidy Bond Tax Act on the ability of States and localities to issue housing bonds, and I will comment on the specific provisions of Senator Roth's bill that would restore widespread workability to housing bond issues. More detailed written testimony has been provided for the record.

In 1980, Congress perceived the danger in unlimited mortgage revenue bond programs and passed legislation to limit bond volume and target the use of bond proceeds. Congress applied only two restrictions to rental housing bonds. The first restriction was registration of bonds. The second restriction was that 20 percent of the units in any project financed with bond proceeds must be held for occupancy by families who are eligible for Federal rental assistance.

Because of rapid growth in the use of single family bonds, Congress was much more explicit in the controls they established. First, a volume limit was established for each State. Congress pro-

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jected that this volume ceiling would result in a $10 to $15 billion annual bond program for single family housing.

To further insure that the proceeds of the bonds went to families at the lower end of the eligible home ownership market, they further restricted the use of such proceeds to first-time homebuyers and to homes that were 90 percent or less of the median home price for the area. To limit what they considered to be abuses in fees paid in the packaging of such bonds, Congress also established extremely rigid standards as to the amount of income that could be derived from such bond sales.

Of most importance is the 1-percent limit on the yield, commonly understood as the difference between the bond yield and the interest rate on mortgages originated from that bond issue. The 1-percent limit must cover all costs of issuance and of administration of the programs. Now, in 1981, housing bond issues under the permanent rules of the Mortgage Subsidy Bond Tax Act total less than $2 billion, less than 15 percent of the volume ceiling that was imposed by Congress. In a recent study, the Congressional Budget Office found that the average contribution made by issuers of housing bonds in 1981 was 8.7 percent.

Without going, into a summary of the points contained in Senator Roth's bill let me conclude by saying that we are in a terrible state of flux with regard to national housing policy. The Federal Government is steadily reducing its roll. Low income families are being priced out of the market. In fact, housing production has reached its lowest level in 35 years.

If States are to assume responsibility for meeting the housing needs of their residents, they must have the tools to do so. Housing bonds have been the States' primary source of low-cost capital to meet the public purpose of supplying housing. Senator Roth's legislation will resolve many of the technical problems created by the Mortgage Subsidy Bond Tax Act of 1980 and passage of his bill will enable States to once again implement successful housing programs.

We applaud his efforts and strongly encourage Congress to move swiftly in support of his bill. Thank you very much and I would be happy to answer any questions at this time.

[The prepared statement of Mr. Moyer follows:]

COUNCIL OF STATE HOUSING AGENCIES

**PREPARED STATEMENT OF**
**ROBERT S. MOYER, DIRECTOR**
**DELAWARE STATE HOUSING AUTHORITY**
**FOR**
**THE COUNCIL OF STATE HOUSING AGENCIES**
**BEFORE THE**
**SENATE FINANCE SUBCOMMITTEE**
**ON**
**TAXATION AND DEBT MANAGEMENT**
**MAY 21, 1982**

Mr. Chairman and members of the subcommittee, my name is Robert Moyer and I am the Director of the Delaware State Housing Authority. I speak before you today as a representative of the Council of State Housing Agencies. The Council represents state housing finance agencies in 46 states, the District of Columbia, New York and the Commonwealth of Puerto Rico. Affiliate members of the Council include builders, investment bankers, developers and others involved with state housing finance agencies.

I would like to take this opportunity, both for myself and the Council of State Housing Agencies, to applaud Senator Roth for taking action to provide much needed legislative relief from the unworkable provisions of the Mortgage Subsidy Bond Tax Act. We also would like to express our appreciation to Chairman Packwood for taking prompt action on the bill.

Although several critical amendments to the Mortgage Subsidy Bond Tax Act were passed by the Senate in December of last year, five months have gone by and only this week has the conference committee on the bill carrying those amendments (H.R. 4717) been convened. We strongly encourage the Chairman and members of the subcommittee to communicate to Senator Dole, Congressman Rostenkowski and the other members of the conference committee their support for the housing bond amendments. A summary description of the housing bond amendments in H.R. 4717 is attached to this testimony.

Although we support that legislation as the most timely means to improve the workability of the Mortgage Subsidy Bond Tax Act, we see Senator Roth's bill as offering a more comprehensive response to the many practical problems created by the 1980 Act. Irrespective of conference committee action on the Senate amendments, we strongly encourage the subcommittee to push ahead with Senator Roth's bill.

In the remainder of my testimony I will overview the impact of the Mortgage Subsidy Bond Tax Act on the ability of states and localities to issue housing bonds and I will comment on the specific provisions of Senator Roth's bill that would restore widespread workability to housing bond issues. First, however, I would like to briefly comment on the crisis conditions in the housing industry.

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COUNCIL OF STATE HOUSING AGENCIES

Summary of Position
Mortgage Revenue Bond Amendments and Related Report Language for H.R. 4717

The amendments to the Mortgage Subsidy Bond Tax Act ("Act") that were passed by the Senate and included in H.R. 4717 would serve to partially correct technical problems faced by agencies issuing bonds under the Act and would improve the chances that issuing agencies could use their full bonding authority to aid homebuyers and the housing industry during the most severe housing downturn in the last 35 years.

Background

Although Congress authorized over $15 billion in mortgage revenue bonds annually and budgeted accordingly, the restrictive provisions of the Act resulted in less than $2 billion non-transition issues during all of 1981. Where, in the past, housing bond issues were self-supporting, issuer equity contribution during 1981 averaged 8.7% according to the CBO. At present rates of bond issuance, without amendments to the Act, we should see between $4 and $5 billion in single family housing bonds in 1982.

Housing bond issues have been bottlenecked by severe yield (arbitrage) restrictions of 1%. Before the Act, allowable arbitrage was 1.5% and a number of cost items were not included within the arbitrage spread that now must be included within the reduced yield spread.

Technical provisions of the Act require issuing agencies to divest when reserve funds exceed 150% of annual bond debt service. This stipulation may require agencies to book a substantial loss where they are required to liquidate investments on unfavorable terms.

The Act requires that, in all but "target" areas, mortgage bond proceeds may be used to finance housing only for first-time homebuyers for housing priced at or below 90% of the area average for new or existing housing. During a time of record high interest rates, when most potential homebuyers are priced out of the market and the residential construction industry is in complete disarray, these restrictions stand in the way of mortgage revenue bonds serving as an effective countercyclical stimulus.

Although the Act required rental projects financed with tax-exempt bonds to hold 20% of units for low income, the term of low income occupancy and the definition of low income households were not unambiguously specified.

Because of these major problems with the Act, the Senate Finance Committee passed unanimously a number of amendments to the Mortgage Subsidy Bond Tax Act. The full Senate subsequently passed H.R. 4717, the miscellaneous tax bill containing the housing bond amendments.

Housing Bond Amendments Included in H.R. 4717

- Allowable arbitrage is raised from 1% to a sliding scale ranging from 1-1/8% for issues of $30 million or less to 1-1/16% for issues of $100 million or more.

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- Issuing agencies may postpone necessary disvestitures of excess reserves until reserves can be divested without incurring a capital loss.

- For multifamily rental housing bonds, low income households are explicitly defined as being households with incomes at 80% or less of the area median with necessary adjustments for household size.

- The term of low income occupancy for multifamily projects is defined as the greater of the term of the subsidy where rental assistance is provided or half the term of the bond where internal subsidization is used. In no case may the low occupancy term be less than 10 years.

Suggested Report Language

Because the arbitrage relief provided in the Senate amendments is inadequate to allow self-supporting housing bond issues on a wide scale, we suggest that the conference committee include report language stipulating that:

- Mortgage prepayments be credited bi-annually rather than on a continuing basis. This regulatory change has been proposed by President Reagan and would increase arbitrage by about 1/8%.

- Allow payments to a financial institution as consideration for the issuance of a letter of credit to be treated as interest paid on the issue, provided that the present value of the payments is less than the present value of the interest saved from the effective reduction in bond term that the arrangement provides.

As an emergency measure, we also suggest that report language expand the definition of target areas under the Act to include areas in which there is a continuing crisis in affordable mortgage credit which seriously jeopardizes the viability of the housing industry.

Impact of Conference Committee Action

| Option | 1982 SF Bonds Sold ($billions) | Housing Benefitting (thousands) | Total Induced Home Sales (thousands) | Job Impact (thousands) | Tax Revenues Generated ($millions) |
|---|---|---|---|---|---|
| No Action: | 4 - 5 | 74 - 92.5 | 160 - 200 | 132 - 165 | 720 - 900 |
| Adopt Senate Amends: | 6 - 7 | 111 - 129.5 | 240 - 280 | 198 - 231 | 1,080 - 1,260 |
| Adopt Senate Amends and Report Language: | 10 - 12 | 185 - 222 | 400 - 480 | 330 - 396 | 1,800 - 2,160 |

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## The Need for Mortgage Revenue Bonds

The downturn in housing production which began in the late summer of 1979 has grown worse over the passing months. With housing production at post-war lows and over one million construction industry workers unemployed, there can be no doubt that we have a depression in the housing industry. A shutdown of the housing industry has widespread impact on the economy. Revenues from property tax, home sales and related retail sales taxes, income and corporate tax and other fees associated with the sale of new and existing homes have fallen substantially. In place to these revenues of local, state and federal government we have rising unemployment, welfare claims and builder bankruptcies. Many sectors of the U.S. economy are suffering during the present recession. None have borne the burden of high interest rates more heavily than the construction industry.

Conservative estimates of household formation, losses to the existing stock and necessary vacancy allowances indicate that we will need about 2.45 million new housing units per year during the decade of the eighties to maintain present levels of housing quality and availability. If present trends persist, we are unlikely to have annual production this year that is much higher than last year's dismal level of 1.08 million starts.

The implications of this production shortfall are clear. Across income levels, renters and first-time home buyers will face a rapidly falling standard of living as prices for housing units will be bid up – where units are available. Most people who presently own homes will be in good shape if they aren't required to move and if their housing needs don't change.

At the same time that the housing industry faces a depression, the federal government has substantially reduced its role in housing. Both the Section 8 and public housing programs face draconian cuts. States are expected to shoulder housing responsibility now that the Federal government has stepped back. In the past, states have played a key role in serving the needs of individuals who could not afford decent housing. State housing finance agencies (HFAs) using tax exempt bonds, have provided over 420,000 units of affordable ownership housing for moderate income households. State HFAs have financed the development of over 360,000 units of primarily low income rental housing as well. Despite the unprecedented need for the continuation of state housing programs, Federal legislation in the form of the Mortgage Subsidy Bond Tax Act of 1980 has rendered bond-financed programs virtually unworkable for single family housing and multifamily rental housing not receiving federal rental assistance subsidies.

## The Mortgage Subsidy Bond Tax Act

In 1980, Congress perceived a danger in unlimited mortgage revenue bond programs and passed legislation to limit bond volume and target the use of bond proceeds. Given what Congress thought to be a much more dramatic rental housing crisis, and given that the economics of the rental market work to naturally restrict the volume of such bonds, the Congress applied only two restrictions to rental housing bonds. The first restriction was registration of bonds, the second restriction was that 20% of the units in any project financed with bond proceeds must be held for occupancy by families who are eligible for federal rental assistance.

Because the rapid growth in the use of housing bonds was primarily in the single-family homeownership program, Congress was much more explicit in the controls they established. First, a volume limit was established for each state equal to either 9% of the mortgage market in that state determined on a 3 year rolling average or $200 million



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whichever was greater. They projected that this would result in a $10 to $15 billion dollar bond program for single family housing. To further ensure that the proceeds of the bonds went to families at the lower end of the eligible homeownership market, they further restricted the use of such proceeds to first-time homebuyers, and to homes that were at 90% or less of the median home price for the area. The median price is determined separately for both newly constructed and existing housing. The first-time homebuyer requirement was determined as an absence of an interest in a home for three years.

To limit what they considered to be abuses in fees paid in the packaging of such bonds, Congress also established extremely rigid standards to the amount of income that could be derived from such bond sales. These are commonly referred to as the Yield and Arbitrage Limitations. Of most importance is the 1% limit on the yield, commonly understood as the differences between the bond yield and the interest rate on mortgages originated from that bond issue. The 1% income limit must cover all costs of issuance and of administration of the programs.

The specific provisions of the 1980 Act are:

- Good Faith Requirements. The 1980 Act tightened the restrictions for eligible single family mortgages and requires severe penalties for noncompliance. 95% of all mortgages for a given issue must be in compliance with four major provisions of the Act: (1) first-time homebuyer requirement, (2) owner occupied house, (3) purchase price limitations, and (4) loan assumption restrictions. Treasury regulations have spelled out procedures for enforcing these provisions that prevent instances of noncompliance from jeopardizing the tax-exempt status of the bonds.

- Arbitrage Limitations. Prior to the 1980 Act, arbitrage was limited to 1.5% above the net interest cost (NIC) of the bonds to the issuer. That is, the interest charged to the borrower could not be greater than 1.5% above the NIC to the HFA. Costs such as origination fees and underwriters discount were not included in the arbitrage limit. The new law changed the definition of arbitrage by including these costs which were previously excluded. In addition, the limit has been reduced from 1.5% to 1%. Taking into account the new arbitrage definition, the spread has been effectively reduced from 1.5% to approximately .5%.

- Reserve Fund Limitations. Prior to the 1980 Act, reserve funds were limited to 15% of the bond sale and could earn unlimited arbitrage. The reserve fund limitation has been changed to a maximum 150% of the annual debt service which means the maximum rate changes annually as the debt service changes. If the reserve fund exceeds 150%, the excess funds are required to be immediately divested. Also, the reserve fund can no longer earn arbitrage for the HFA; any arbitrage earnings on reserve funds must be paid to the federal government or to the mortgagors.

- Bond Registration Requirements. Prior to the 1980 Act, no type of tax-exempt bond was required to be registered with the Securities Exchange Commission. After January 1, 1982, all mortgage revenue bonds must be in registered form.

- Multifamily Provisions. The 1980 Act requires that, in multifamily projects, at least 20% of the units be reserved for occupancy by persons eligible for Section 8 housing (50% of area median income) for twenty years.



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- Volume Cap. The aggregate amount of single family revenue bonds that may be issued in a state during a calendar year is limited to the greater of $200 million or 9% of the average of home mortgages originated annually in the State over the preceeding three years.

- First Time Homebuyer Requirements. Mortgagors must not have been homeowners within three years of receiving a bond-financed loan, except in the case of rehabilitation loans, home improvement loans, and mortgages placed in targeted areas.

- Residence and Purchase Price Restrictions. The mortgage must be for the principal residence of the borrower and the purchase price of the residence must not exceed 90% (110% in targeted areas) of the average purchase price in the preceding year in the area where the mortage is placed.

- Assumption Provisions. The Act imposes the same eligibility requirements on persons assuming loans financed with tax-exempt bonds as are imposed on the initial borrower (i.e. first-time homebuyers, owner occupied, and purchase price limit).

- Targeting To Distressed Areas. Twenty percent of the bond proceeds must be used for mortgage loans in targeted areas, if such areas are in the issuer's jurisdiction.

- Veteran's Housing Restrictions. Bonds for veteran's housing must be secured by the general obligation of the issuing State.

- Sunset. Except for qualified veteran's bonds, all mortgage bonds issued after December 31, 1983 will be taxable.

**The Effect of the Mortgage Subsidy Bond Tax Act**

In 1981, housing bond issues under the permanent rules of the Mortgage Subsidy Bond Tax Act totaled less than $2 billion – less than 15% of the volume ceiling imposed by Congress. In a recent study, CBO found that the average contribution made by issuers of housing bonds in 1981 was 8.7%. Hence, the net effect of the Mortgage Subsidy Bond Tax Act was to substantially reduce the volume of bonds issued and to require many issuers to contribute funds to compensate for the tight yield spread mandated in the 1980 Act. An additional finding of the CBO study was that, because this tight arbitrage restrictions resulted in bonds being less secure to investors, the bond could not obtain premium ratings and the resulting yields on the bonds had to be higher in order for them to sell. The ironic result of the tight arbitrage restrictions, intended by Congress to ensure that the lowest possible interest rates were passed on to consumers, was that interest rates on these mortgages were probably higher than they would have been in the absence of the Mortgage Subsidy Bond Tax Act.

I should note that recently a number of agencies have issued bonds that are self-supporting under the rules of the 1980 Act. These agencies have issued bonds that can achieve a higher yield spread under the Mortgage Subsidy Bond Tax Act because mortgages which are still outstanding once all of the bond issue has been paid off are forgiven. This benefit to individuals who hold mortgages for many years is averaged into the yield spread calculation. Hence a spread that is 1.35% may, for the purposes of the Mortgage Subsidy Bond Tax Act, actually look like 1.00%.



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The mortgage forgiveness approach should not be viewed as a generally acceptable solution to the unworkable arbitrage restrictions of the Mortgage Subsidy Bond Tax Act. First of all, mortgage forgiveness only works well in areas where developers or lenders are willing to contribute a significant number of upfront points. For developers, these points probably will be factored into the sales price of the house. Only Texas and California have provided the appropriate environment for mortgage forgiveness so far. Although Nebraska did use mortgage forgiveness in its March 29 state issue, that issue had to be substantially down-sized because many lenders would not pay the points. Mortgage forgiveness also raises serious questions about equity. Is it fair for homebuyers who prepay their mortgages to subsidize other homeowners who do not prepay? Additionally, the requirement for points would place a burden on homebuyers that cannot afford to pay the points or who may be priced out where the points are factored into the sales price of the home. By and large, mortgage forgiveness appears to be a jury rig approach to make housing bond issues possible under the present law. A workable Mortgage Subsidy Bond Tax Act is a more equitable and widely applicable approach to restoring the ability of states and localities to operate housing programs.

## Corrective Amendments to the Mortgage Subsidy Bond Tax Act In S. 2425

Senator Roth's bill addresses many of the practical problems posed by the Mortgage Subsidy Bond Tax Act. In the following sections I will summarize the specific issues that are addressed by subsections of the Roth bill.

### Arbitrage Limits

As I noted earlier, self-supporting bond issues have not been possible on a wide scale under the 1% arbitrage limit of the 1980 Act. This prevents agencies lacking reserves or state appropriations from issuing bonds and severely reduces the total volume of housing bonds issued in a given year. Senator Roth's bill would raise arbitrage to 1.25%. This yield level is generally accepted in the bond finance community as being the minimum necessary to promote widespread use of self-supporting housing bonds under normal market conditions.

### Protection Against Reserve Losses

Prior to the 1980 Act, reserve funds on MRB issues were limited to 15% of the bond sale. These funds could earn unlimited arbitrage to support agency operations. The 1980 Act limits reserves to 150% of annual debt service. Any arbitrage on the reserve must be paid to the federal government or the mortgagors. If the reserve fund, due to mortgage prepayments for example, exceeds the 150% limit, excess funds must be divested immediately. Such a divesture could result in significant losses to the reserve fund if the market is poor at the time the excess funds are required to be divested. Senator Roth's bill would allow agencies to postpone the required liquidation of their investments until such time that a loss would not be incurred.

### Registration Requirements

According to the 1980 Act, starting in 1982, all MRBs must be in registered form. Mortgage revenue bonds are the only type of tax-exempt bond required to be registered with the Securities Exchange Commission. From a policy standpoint, this is discriminatory; either all tax-exempt bonds should be required to be registered or none of them should. Registration will have an upward effect on the interest rates charged to homebuyers while having no effect on the costs of the issue to the federal government. The Roth bill eliminates the requirement that housing bonds be in registered form.



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**First-Time Homebuyer Limitations**

In response to the present depression in the housing industry, broadening the group of potential homebuyers who could benefit from mortgage revenue bonds could result in revenue bonds serving as an effective stimulus to the industry, We calculate that each $1 billion in mortgage revenue bonds induces 40,000 home sales and results in 33,000 construction-related jobs. As a response to the current plight of the construction industry and to make revenue bond financed mortgages available to other special needs groups, a broadening of the category of eligible households is appropriate. For these reasons, CSHA supports Senator Roth's provisions to:

a) reduce the first-time homebuyer requirement from 100% to 80% of mortgagors, and

b) expand the category of eligible households to include homeowners residing in substandard housing and homeowners who have lost use of their homes due to natural disaster or government action.

**Purchase Price Limits**

Also as a means to widen the use of mortage revenue bonds during a time of severe distress in the housing industry, CSHA supports Senator Roth's provision to raise purchase price limits for bond-financed housing from 90% to 110% of area averages for non-targeted areas and from 110% to 120% of area averages for targeted areas.

**Mortgage Revenue Bond Sunset**

In the Mortgage Subsidy Bond Tax Act, Congress stipulated that no tax exempt mortgage revenue bonds could be issued after December 31, 1983. Because of the unworkable provisions of the Act, 1981 was practically a dead year for revenue bonds. 1982 should be better, but not near the level authorized by Congress in the 1980 Act. Because mortgage revenue bonds have not been given a fair test under the provisions of the 1980 Act, CSHA strongly supports Senator Roth's provision to extend sunset on mortgage revenue bonds to December 31, 1985.

**Definition of Low Income for Rental Housing Bonds**

The 1980 Act includes a number of provisions with regard to multifamily housing that further complicate the process of delivering low and moderate cost rental housing. Given the growing shortage in the availability of rental housing at all price ranges, we believe it is critical that the rental housing pipeline be opened up, not further clogged with restrictions that bear little relation to the goal of providing decent and affordable housing to low and moderate income households.

The 1980 Act has jeopardized further the production of low cost rental housing by cross-referencing tenant income eligibility to Section 8 levels which now have been lowered to 50% of area median income. When the 1980 Act was passed, the eligible income level was 80% of area median. When coupled with a major reduction in Federal rental assistance for new construction, this unforseen change will greatly reduce the number of rental projects that feasibly can be built. Senator Roth's bill reasserts the original congressional intent in the Mortgage Subsidy Bond Tax Act by directly defining low income for the purposes of the Act as 80% of area median income or low income as classified by the Secretary of HUD.

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Term of Low Income Occupancy

Because the term of the tax-exempt financing for multifamily housing, particularly in the case of moderate rehabilitation, most often exceeds the period of the budget authority of Section 8 assistance, it is probable that the Section 8 assistance will end long before the bonds are paid off. Nevertheless, it appears that tax-exempt financed units are required to maintain the low income occupancy requirements of the 1980 Act for twenty years or sacrifice tax exempt status. This provision of the 1980 Act is not practical for Section 8 moderate rehabilitation projects which receive federal assistance for a maximum of fifteen years.

Furthermore, the Section 8 program is coming to an end. Little multifamily rental housing is being built despite unmatched demand for rental units from households priced out of the ownership market. HFAs could play a major role in producing moderate cost rental housing. Unfortunately, the strict tenant income provisions make some form of federal rental assistance subsidy necessary for HFA-financed rental housing to be built. By reducing the low income requirements – requirements that were written before the Section 8 phase-out was planned – HFAs will be able to build much-needed moderate cost rental housing without federal rent subsidies.

In order to allow HFAs to continue to provide moderate cost rental housing during a time when federal rent subsidies are being phased out, CSHA strongly supports the provision in Senator Roth's bill which redefines the term of low-income occupancy as the greater of: the term of federal rental assistance provided to units in the development; half the term of the bonds used to finance the development; or ten years.

Summary

This is a period of great flux in national housing policy. From all indications, the federal government is significantly reducing its role in the provision of decent and affordable shelter for households that, without assistance, would be priced out of the market. This cutback in funding for housing programs does not coincide with any reduction in need for housing in this country. In fact, housing production has reached its lowest level in 35 years. The affordability and availability gap for low and moderate income households is growing wider by the day.

If states are to assume responsibility for meeting the housing needs of their residents, they must have the necessary tools to do so. Housing bonds have been the states' primary source of low cost capital to meet the public purpose of supplying housing for those who otherwise could not afford it.

Senator Roth's legislation will resolve many of the technical problems created by the Mortgage Subsidy Bond Tax Act. With the amendments proposed by Senator Roth, states will once again be able to implement housing programs to increase the supply of affordable housing. We applaud his efforts and strongly encourage Congress to move swiftly in support of his bill

Thank you very much. I would be happy to answer questions at this time.



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Senator ROTH. Thank you, Mr. Moyer. I think we will complete the discussion and then ask questions of the panel.

Mr. Ams.

**STATEMENT OF JOHN AMS, DIRECTOR OF TAX PROGRAMS, GOVERNMENT AFFAIRS DIVISION, NATIONAL ASSOCIATION OF REALTORS, WASHINGTON, D.C.**

Mr. AMS. My name is John Ams. On behalf of the 648,000 members of the National Association of Realtors we greatly appreciate the opportunity to present our views on the need for legislative and administrative changes in the mortgage bond program and particularly S. 2425, introduced by Senator Roth.

First, we would like to thank the subcommittee for holding this hearing and applaud Senator Roth for introducing this bill and initiating again the discussion on the need for amendments to the Mortgage Subsidy Bond Tax Act. Such amendments are needed to make the bond program workable. Some of the changes contained in S. 2425 are also contained in H.R. 4717, as amended by the Senate. I will, therefore, focus briefly on some of the changes that are not contained and are different than the changes contained in the bill that is in conference.

S. 2425 would increase the arbitrage limit to 1.25 percent. Since enactment issuers have stated time and again that the 1 percent limit on the yield contained in current law is too restrictive, it generally results in issuers having to make significant equity contributions to the issue for the purpose of establishing reserves and paying issuance costs. This assertion has been borne out by experience.

In 1981 issuers had to make equity contributions averaging 8.7 percent of the issue, according to the Congressional Budget Office. Studies show that an increase of approximately 1.25 percent would alleviate this situation and allow more issues to be marketed, but at no additional Treasury cost.

In addition, S. 2425 would ease the first time home buyer restriction and allow existing homeowners to participate in up to 20 percent of the bond proceeds. Easing this restriction as an emergency measure is vitally necessary in order to increase the marketability of the bonds and to insure that more families with moderate incomes can qualify for mortgages. Only 5 percent of all families can now qualify for a mortgage on a moderate priced home and mortgages provided by the bond program are in the short run the only avenue whereby more families can achieve more homeownership.

S. 2425 would also increase the purchase price limitation contained in current law from 90 percent of the average area purchase price to 110 percent of the average area purchase price in nontargeted areas. During a time of record high interest rates, when most potential home buyers are priced out of the market and the residential construction industry is in complete disarray, the 90-percent limitation stands in the way of mortgage revenue bonds serving as an effective countercyclical stimulus.

By increasing the purchase price limitation to 110 percent, mortgage bond financing could be used to help satisfy the Nation's

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housing needs without the restrictions that may be appropriate during normal economic times.

Finally, S. 2425 would sunset the mortgage bond program as of the end of 1985 rather than 1983. The National Association of Realtors believes it is premature to address the sunset question. The focus should be on making the bond program workable. In fact, because we believe that the proposals I have just discussed constitute an emergency program, even these proposals should be sunsetted. In the long run, residential mortgage financing should be provided by the private sector of the economy.

In the present economic climate, however, when the private sector is unable to provide mortgage funds at reasonable cost to the home buying public, it is necessary to have alternative funding sources. It is entirely another matter to extend the program that has not worked because of the lack of needed legislative changes and for which there is, as a result, no historical experience.

In summary, the housing industry is in a severe depression because of high interest rates on residential mortgage loans. During this time of crisis, legislative amendments to the mortgage bond program must be adopted in order to allow more such bonds to be issued and to make mortgages provided by the bonds more widely available.

S. 2425 addresses these concerns and the substantive changes contained in the bill should be enacted promptly if the House-Senate conferees on H.R. 4717 are not able to adopt the Senate amendments to that bill and add needed conference report language. Thank you.

[The prepared statement of Mr. Ams follows:]

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STATEMENT
on behalf of the
NATIONAL ASSOCIATION OF REALTORS®
regarding
S. 2425
to the
SENATE FINANCE SUBCOMMITTEE ON TAXATION
AND DEBT MANAGEMENT
by
JOHN AMS
MAY 21, 1982

My name is John Ams. I am the Director of Tax Programs in the Government Affairs Division of the NATIONAL ASSOCIATION OF REALTORS®.

On behalf of the 640,000 members of the National Association, we greatly appreciate the opportunity to present our views on the need for legislative and administrative changes in the mortgage bond program and S. 2425, introduced by Senator Roth.

BACKGROUND

Although Congress authorized over $15 billion in mortgage revenue bonds annually and budgeted accordingly, the restrictive provisions of the Act resulted in less than $2 billion non-transition issues during all of 1981. Where, in the past, housing bond issues were self-supporting, issuer equity contribution during 1981 averaged 8.7% according to the CBO. At present rates on bond issuance, without amendments to the Act, we should see between $4 and $5 billion in single family housing bonds in 1982.

Housing bond issues have been bottlenecked by severe yield (arbitrage) restrictions of 1%. Before the Act, allowable arbitrage was 1.5% and a number of cost items were not included within the arbitrage spread that now must be included within the reduced yield spread.

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Technical provisions of the Act require issuing agencies to divest when reserve funds exceed 150% of annual bond debt service. This stipulation may require agencies to book a substantial loss where they are required to liquidate investments on unfavorable terms.

The Act requires that, in all but "target" areas, mortgage bond proceeds may be used to finance housing only for first-time homebuyers for housing priced at or below 90% of the area average for new or existing housing. During a time of record high interest rates, when most potential homebuyers are priced out of the market and the residential construction industry is in complete disarray, these restrictions stand in the way of mortgage revenue bonds serving as an effective countercyclical stimulus.

Although the Act required rental projects financed with tax-exempt bonds to hold 20% of units for low income, the term of low income occupancy and the definition of low income households were not unambiguously specified.

Because of these major problems with the Act, the Senate Finance Committee passed unanimously a number of amendments to the Mortgage Subsidy Bond Tax Act. The full Senate subsequently passed H.R. 4717, the miscellaneous tax bill containing the housing bond amendments.

The mortgage bond provisions in H.R. 4717 have not yet been considered by the House-Senate conference committee. As a consequence, it is appropriate to consider S. 2425 at this time. If the necessary mortgage bond amendments are not resolved in the very near future, the opportunity to help housing during the peak summer months will be lost.

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S. 2425

We thank the Subcommittee for holding this hearing and applaud Senator Roth for introducing S. 2425 and initiating the discussion on the need for amendments to the Act. Such amendments are needed to make the bond program workable. Some of the changes contained in S. 2425 are also contained in H.R. 4717 as amended by the Senate. We will focus briefly on the need for the changes that are not contained in or are different than the changes in that bill.

1. Arbitrage. S. 2425 would increase the arbitrage limit to 1.25%. Since enactment, issuers have stated that the 1% limit on yield contained in current law is too restrictive and generally results in issuers having to make significant equity contributions to the issue for the purposes of establishing reserves and paying issuance costs. This assertion has been borne out by experience: in 1981, issuers had to make equity contributions averaging 8.7% according to the Congressional Budget Office. Studies show that an increase to approximately 1.25% would alleviate this situation and allow more issues to be marketed, but at no additional Treasury cost.

2. First-time Homebuyer Restriction. S. 2425 would ease the first-time homebuyer restriction and allow existing homeowners to participate in up to 20% of the bond proceeds. Easing this restriction, as an emergency measure, is vitally necessary in order to increase the marketability of the bonds and to ensure that more families with moderate incomes can qualify for mortgages. Only 5 percent of all families can now qualify for a mortgage on a moderate-priced home and mortgages provided by the bond program

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is, in the short run, the only avenue whereby more families can achieve homeownership.

3. Increase in Purchase Price Limitation. S. 2425 would increase the purchase price limitation contained in current law from 90 percent of the average area purchase price to 110 percent of the average area purchase price in nontargeted areas. During a time of record high interest rates, when most potential homebuyers are priced out of the market and the residential construction industry is in complete disarray, the 90 percent limitation stands in the way of mortgage revenue bonds serving as an effective countercyclical stimulus. By increasing the purchase price limitation to 110 percent, mortgage bond financing could be used to help satisfy the nations's housing needs without the restrictions that may be appropriate during normal economic times.

4. Sunset Extension. S. 2425 would sunset the mortgage bond program as of the end of 1985 rather than 1983. The NATIONAL ASSOCIATION OF REALTORS® believes it is premature to address the sunset question. In fact, because we believe that the proposals discussed above constitute an emergency program, even these proposals should be sunsetted. In the long run, residential mortgage financing should be provided by the private sector of the economy. In the present economic climate, when the private sector is unable to provide mortgage funds at reasonable cost to the homebuying public, it is necessary to have alternative funding sources. It is entirely another matter, however, to extend a program that has not worked because of the lack of needed legislative changes and for which there is, as a result, no historical experience.

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SUMMARY

The housing industry is in a severe depression because of high interest rates on residential mortgage loans. During this time of crisis, legislative amendments to the mortgage bond program must be adopted in order to allow more such bonds to be issued and to make mortgages provided by the bonds more widely available. S. 2425 addresses these concerns and the substantive changes contained in the bill should be enacted promptly if the House-Senate conferees on H.R. 4717 are not able to adopt the Senate amendments to that bill and add needed conference report language.

Senator BOTH. Thank you, Mr. Ams.
Mr. Koelemij.

**STATEMENT OF JOHN KOELEMIJ, VICE PRESIDENT AND SECRETARY, NATIONAL ASSOCIATION OF HOME BUILDERS, WASHINGTON, D.C.**

Mr. KOELEMIJ. My name is John Koelemij and I am a home-builder from Tallahassee, Fla. I am testifying today on behalf of the more than 115,000 members of the National Association of Home Builders. NAHB is a trade association of the Nation's home-building industry, of which I am vice president and secretary.

Senator, I would first like to commend you for your leadership on the issue of providing a workable mortgage revenue bond program. Since 1970, mortgage revenue bonds have provided essential financing for single and multifamily housing of modest cost. As you are well aware, the pendency of the so-called Ullman bill in 1979 and 1980 places a de facto moratorium on the issuance of bonds by States and localities. We strongly believe that Congress and certainly this subcommittee intended that a workable program be implemented by the Treasury as expeditiously as possible.

But you are aware of the reality. We are still awaiting the conference report on H.R. 4717. Mr. Chairman, housing activity has come to a virtual standstill across the country in the face of persistent high interest rates. In April it was the 9th consecutive month that the rate of housing production had dropped below 1 million units. Housing is in the 42d month of a recession and at depression stages.

New home sales in April were the lowest ever on record. Construction business failures are up 53 percent. Housing-related industries are running at 40 percent of capacity. Fifty percent of the lumber mills in the United States are closed. Unemployment in the construction trades are at 19.4 percent, double the average rate of joblessness.

Senator, an extensive statement was submitted and I would request that it be made a part of the record. In deference to the time limit and your late hours this morning I will add a few remarks, if I may, and that is that we really support the increase proposed in S. 2425, increasing the arbitrage to 1.25 percent.

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In our State, as a reaction to the request for the States to assume a greater responsibility of housing and other programs on the State and local level, we had to increase the sales tax from 4 to 5 percent, which was not a welcome act, but the State also appropriated $6 million to support our housing finance agency. But I know this was done only for one time, expecting that the arbitrage rules would be changed as a result of pending legislation.

On multifamily housing, as you know, we are very dependent on the use of revenue bonds because multifamily housing provides a greater percentage of housing for low and moderate income families and your bill will substantially help that matter.

We would normally feel uncomfortable testifying in support of changes in the legislation until the responsible department has published regulations implementing the program, but after 17 months, Senator, we do not have the luxury to wait for the Treasury to act. And with that I really want to cut short my statement and I thank you for letting us appear here in support of your bill, and I would be glad to answer any questions.

[The prepared statement of Mr. Koelemij follows:]

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STATEMENT OF

THE NATIONAL ASSOCIATION OF HOME BUILDERS

before the

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

COMMITTEE ON FINANCE

UNITED STATES SENATE

on

MORTGAGE REVENUE BONDS

MAY 21, 1982

Mr. Chairman and Members of the Committee:

My name is John Koelemij and I am a homebuilder from Tallahassee, Florida. I am testifying today on behalf of the more than 115,000 members of the National Association of Home Builders (NAHB). NAHB is a trade association of the nation's homebuilding industry, of which I am Vice President and Secretary. Mr. Chairman, since November of 1981, NAHB has suffered a loss of over 9,000 members. Accompanying me today are Robert D Bannister, Senior Staff Vice President for Governmental Affairs and Jim Schuyler, Staff Vice President and Legislative Counsel for Governmental Affairs.

Mr. Chairman, I first want to commend you and Senator Roth for your leadership on the issue of providing a workable mortgage revenue bond program. Since 1970, mortgage revenue bonds have provided essential financing for single and multifamily housing of modest cost. Revenue bonds provide mortgages at below market interest rates, and therefore are particularly beneficial to many families who simply cannot afford conventionally financed mortgages.

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As you are well aware, the pendency of the so-called "Ullman bill" in 1979 and 1980 placed a de facto moratorium on the issuance of bonds by states and localities. In December, 1980, that impasse was finally resolved through the passage of the Omnibus Reconciliation Act, which provided for the future issuance of mortage bonds under certain limitations. The Act provided for the continuation of single-family bond programs with a one percent arbitrage limit, annual volume cap by state, purchase price limit, first-time homebuyer requirement bond registration after January 1, 1982, and expiration of the program at the end of 1983. Multifamily bonds could be issued if 20 percent of the units were made available for low income families.

We strongly believe that Congress and certainly this Subcommittee intended that a workable program be implemented by the Treasury as expeditiously as possible. But this Subcommittee is aware of the reality:

- In 1981, because of technical problems in the 1980 Act, Treasury regulations and a sluggish bond market, only 15 percent of the amount of single family bond activity approved by Congress was issued.

- Multifamily rental construction under this program has also fallen off, with only $3.7 billion multifamily bonds issued in 1981, compared to $5.6 billion in 1979 and $4.1 billion in 1980.

- It was not until July 1, 1981, almost seven months after enactment of the bill, that the Treasury Department issued regulations for the single family program. This was after considerable pressure was placed on Treasury and the White House by Members of Congress, including Members of this Subcommittee and interested housing groups. Furthermore, it was not until the end of 1981, after the Treasury revised portions of the regulations, namely the "good faith test - 95 percent rule," that the program became somewhat workable.

- Senate amendments to the Miscellaneous Revenue Act of 1981, H.R.4717, which would alleviate some of the problems associated with bond issuance, are currently being considered by a Senate Finance-Ways and Means Conference Committee, although these provisions were adopted by the Senate almost six months ago.

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Mr. Chairman, the complexity of the statutory requirements coupled with the narrow and questionable interpretation of Treasury has meant that the program is simply not providing sufficient relief to the housing crisis we currently confront. It should be noted that the President's Housing Commission recently recommended to the President that "... state and local authorities should be allowed to issue mortgage revenue bonds, under the volume limits and targeting provisions of existing law. Moreover, the technical problems associated with the Mortgage Subsidy Bond Tax Act ought to be addressed by the Administration so that mortgage revenue bond programs can be made operable."

SINGLE FAMILY HOUSING OUTLOOK

To understand the need for immediate legislative action in this area, it is important to explain why mortgage revenue bonds are so critical to our industry and to the potential homebuyer at this time.

Mr. Chairman, housing activity has come to a virtual standstill across the country in the face of persistent high interest rates. Potential homebuyers are fighting a losing battle against mounting monthly mortgage payments, and our nation's homebuilders are fighting for survival against mounting odds.

The housing collapse that we feared and prayed would not occur is upon us, and its impact on the national economy in terms of lost jobs and federal revenues has already been significant. The statistics speak for themselves:

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HOUSING PRODUCTION

- New housing production in 1981 totalled 1.1 million units as against an annual need for new homes that has been estimated conservatively at 1.8 million units throughout the 1980s. Last year was the worst housing production year since 1946.

- 1982 could finish as the worst post-war production year yet. NAHB's optimistic forecast for this year holds annual production to about one million. Housing starts in April fell to a seasonally adjusted annual rate of 881,000, down 32 percent from a year earlier, and down more than 58 percent from the peak of over 2 million in 1978. April was the ninth consecutive month that housing starts were below the one million annual level.

- May is the 41st month of recession in housing. The previous record was set during the Eisenhower Administration when the housing recession lasted 27 months.

NEW HOME SALES

- 1981 was the worst year for new home sales since the Census Bureau began collecting statistics in 1963. Only 437,000 new homes were sold, compared to 545,000 homes in 1980 and more than 800,000 in 1977 and 1978.

- Since March 1981, annual new home sales rates have been under the 500,000 level. In March of this year, the annual sales rate of new homes was 334,000. This is the lowest monthly rate since the Census Bureau began keeping monthly figures.

- Actual sales in March nationwide were 31,000 new homes -- roughly the monthly number of new homes that were sold in the West alone during 1978 and 1979. In all of the Southern states, only 7,000 new homes were actually sold in March. Only 6,000 new homes were sold in the Northeast and North Central states combined.

INTEREST RATES

- Conventional mortgage interest rates now average above 17 percent. Mortgage rates at such high levels price the vast majority of potential buyers out of the market.

- Interest rates normally fall rapidly and decisively during a recession, but in this downturn they have declined slowly and have remained in an historically high range. Analysts forecast that mortgage rates are not likely to drop below 15 percent this year, thereby killing off any chances for a housing recovery in 1982. The consensus is that home sales will remain at depression levels until mortgage rates drop to the 12 percent range, which by historical standards still represents an extraordinarily high cost of home financing.

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- By reducing interest rates from 16 percent to 12 percent, 4.6 million additional families could qualify for a $65,000 mortgage. At 12 percent interest rates, more than 22 percent of the nation's families have the $35,000 income needed to qualify for a modest $65,000 mortgage. At 16 percent rates, fewer than 14 percent have the $44,000 income needed to qualify for the same mortgage amount.

UNEMPLOYMENT

- Unemployment in the construction trades in April was 19.4 percent or 1,011,000 unemployed workers, accounting for 10 pecent of the total unemployed work force. Another 200,000 skilled craftsmen could lose their jobs over the next several months.

- An estimated 200,000 self-employed people in construction-related businesses have either shut down or sharply curtailed their operations in the housing industry. Self-employed people are not counted in the Labor Department's unemployment statistics.

- Bankruptcies are up 51 percent for construction firms and 65 percent for subcontractors.

- Rising joblessness toward levels not experienced since the 1930s continues to feed the federal deficit. The Congressional Budget Office estimates that every 1 percent increase in unemployment costs the Treasury $25 billion -- $19 billion in lost revenue and $6 billion in new expenditures to pay for unemployment programs.

It is our belief that tax-exempt revenue bonds provide a major housing opportunity for low and moderate income families. It not only helps the lower income buyer directly by making available affordable level payment mortgages, but it also stimulates the housing mobility necessary for a viable overall housing market. Furthermore, tax-exempt revenue bonds permit states and localities to tailor programs to their own specifications.

It is important to note the benefits of mortgage revenue bonds. One billion dollars in mortgage revenue bonds will provide direct financing for approximately 17,000 units, according to NAHB assumptions. If the units are split evenly between new and existing,

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8,500 newly constructed units would generate 11,700 man years of employment in construction, land development, manufacturing, wholesale trades, transportation, mining and other industries directly related to the homebuilding process.

These 8,500 units would also generate close to $98 million in federal, state and local taxes. The total economic impact, including the multiplier effect, is estimated at $978 million.

These estimates do not assume any substitution, induced sales or ripple effects. If these were included, the impact on the nunber of units financed as well as the revenues generated would be significantly increased. In any event, the benefits of mortgage revenue bonds far outweigh the costs which are estimated at $22.5 million for each $1 billion in bonds.

SINGLE FAMILY AMENDMENTS TO THE MORTGAGE REVENUE BOND ACT

I reiterate, Mr. Chairman, that the current statutory and regulatory framework for single family mortgage revenue bonds simply do not work. Therefore, we support the necessary corections to the program included in the bill introduced by Senator Roth, S.2425. The amendments NAHB support represent no substantial departure from the program approved earlier by Congress. The intent of these amendments is to make the bond program work at the level of activity contemplated by Congress in 1980.

Senator Roth proposes increasing arbitrage from the current one percent limitation to 1-1/4 percent. Arbitrage is essentially the difference between the bond and mortgage interest rates. Prior to the 1980 legislation, the arbitrage limit was 1-1/2 percent but excluded a number of costs which are currently included in the one

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percent spread. In reality, therefore, the spread was actually reduced by at least 2/3 or more from 1-1/2 percent to approximately 1/2 percent.

It is in the homebuilder's interest to provide the lowest mortgage interest rate possible. The one percent yield limitation in present law, however, results in an insufficient cash flow to perform the cost of administering the issue without an equity cash contribution on the part of the issuer. Although the legislation or the legislative history does not indicate that Congress intended cash contributions by issuing agencies, nearly all of the bonds for owner-occupied housing issued thus far under the Ullman legislation were subsidized by the state or local government. These cash contributions allowed the issuers to meet expenses and debt service payments on the bonds as well as provide additional security for the issue. According to a study published by the Congressional Budget Office in March 1982, cash contributions constituted approximately 8.7 percent of the total amount of bonds issued for mortgages in 1981. Even with sizeable cash contributions, the Congressional Budget Office concluded that the current tight arbitrage restrictions reduce the security of the bonds, thereby potentially contributing to higher interest rates. Mortgage rates in turn, may have been somewhat higher as a result of the 1980 legislation.[1]

Faced by steep contributions, it is clear from our situation in Florida, as well as throughout the country, that the one percent yield is simply insufficient. Some states, especially those with a long history of bond issuance, may have reserves to contribute to their

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1 The Mortgage Subsidy Bond Tax Act of 1980: Experience Under the Permanent Rules, Congressional Budget Office, March, 1982, pp. xii, xiii.

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next bond issue but they simply cannot continue such a practice indefinitely. Many states are prohibited by their state constitutions from making such contributions and my state agency in Florida, like many others, is too new to have built up any reserves. Thus, in these times of fiscal austerity, those states and localities that simply cannot afford to issue, or are precluded from doing so, are being penalized.

We urge that the arbitrage limitation be raised sufficiently to make issuance viable. I believe that our state could operate with a spread of 1-1/4 percent to 1-1/2 percent. I understand that in some communities, this is barely sufficient. We urge the Congress to end the discriminatory treatment against single family mortgage revenue bonds by adopting, at a minimum, the 1-1/4 percent provision.

NAHB also supports the removal of the arbitrary registration requirement presently in effect for single and multifamily bonds. The registration requirement means that the trustee or some other party must have a current record of the names of all bond holders. Currently, no other tax-exempt bonds are required to be registered. In discussions with bond underwriters, we have found that this discrimination can have the effect of adding as much as 50 basis points to the marketing of such issuance. Thus, the current arbitrage limitations for single family bonds is even more unrealistic.

Current legislation also limits mortgages from bond proceeds to exclusively first-time homebuyers. We feel that the public purpose of these bonds will still be met if 20 percent of the bond proceeds are provided for existing homeowners, as is included in S.2425. Given the current housing depression, loosening of this requirement

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will result in an increase in mortgage marketability. Problems abound regarding the current restriction. Many first-time homebuyers simply do not have the downpayment necessary to purchase a home. In non-growth states, there simply may not be a sufficient number of first-time homebuyers to take advantage of this program. In terms of labor force mobility, current homeowners may be prevented from transferring jobs if they cannot qualify for this program. In any event, during this housing crisis, it is important to try to prevent an unprecedented demand when interest rates decline. Mortgage revenue bonds can serve as one element of an effective countercyclical stimulus.

S.2425 also raises the purchase price limitation from 90 percent of the average area purhcase price to 110 percent in non-targeted areas, and from 110 percent to 120 percent in targeted areas. Again, this will ease the marketability problem in many states, such as Florida and Delaware, where the current limits are too low.

The 1980 law currently provides that the reserves held by an issuer must be reduced as mortgages are paid off since higher reserves no longer are needed to secure these mortgage amounts. As included in the Senate amendment to the Miscellaneous Revenue Act of 1981, H.R.4717, S.2425 provides that necessary divestitures of reserves can be delayed by issuers until this can occur without incurring a capital loss. Without this provision, issuers may confront sizeable losses, which many may not be able to absorb.

Finally, Mr. Chairman, in the sprirt of fairness, this Subcommittee should extend the sunset to December 31, 1985, as recommended by Senator Roth. In 1980, the Congress and certainly this Committee,

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intended the single family bond program would operate for three years. We are fast approaching the first anniversary of that legislation without any viable program. We believe the clear legislative intent of a three year test of targeted single-family mortgage bonds has been frustrated by the interpretations and delays by Treasury. We believe it would be equitable to establish the sunset three years after workable regulations are effective.

MULTIFAMILY HOUSING OUTLOOK

The multifamily rental construction market is in a seriously depressed state. Essentially no units below the luxury market are being built government assistance. Low-income housing construction currently requires tenant rental subsidies, which are proposed for elimination, and either tax-exempt or other federal assistance for the permanent mortgage. Without these subsidies, projects must be self-supporting or else will not be constructed.

The demand for affordable rental housing is staggering. Vacancy rates are at record lows, below 5 percent nationally. Forty percent of the rental stock is between 40 and 100 years old. NAHB conservatively estimates that 350,000 - 400,000 new units per year will be needed throughout this decade. In 1981, 221,000 multifamily rental units were provided, including subsidized units. Most of these units were not affordable by low and moderate income households. Moreover, since 1979, multifamily bond issuance has declined simultaneously with the demise of the Section 8 program. In 1979, $5.6 billion in multifamily bonds were issued, whereas this figure declined to $4.1 billion in 1980 and $3.7 billion in 1981.

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In the absence of the Section 8 program, or a similar federal production program, it is necessary to make the tax-exempt program viable and self-sustaining. A major factor in the shortage of rental housing is simply the tenant's inability to pay sufficient rent to cover the building's debt service payments and its operating expenses. For the foreseeable future, tax-exempt financing may provide the only means to build rental housing in this nation for low and moderate income households.

We believe tax-exempt financing is consistent with the philosophy of this Administration. Tax-exempts are issued independently by state and local governments to fulfill particular housing needs of the various areas within a state. They provide lower cost financing to those most in need but rely on privately developed housing.

We would normally feel uncomfortable testifying in support of changes in legislation until the responsible department has published regulations implementing the program. But after 17 months, Mr. Chairman, we do not have the luxury to wait for Treasury to act. The multifamily amendments are in no way as complicated as the single family program. Although we still anxiously await release of these regulations, the Administration has proposed severe restrictions on industrial development bonds, such as the elimination of accelerated depreciation when using tax-exempt financing, which would effectively eliminate the use of mortgage revenue bonds for rental construction. Mr. Chairman, we would strongly oppose any changes which would affect the workability of this program. Conversely, it is appropriate at this time to enhance the workability of this program by passage of the multifamily changes included in both S.2425 and the Senate amendments to H.R.4717.

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We have a real concern that when the regulations are finally issued, statutory amendments will be required. The Roth bill addresses two of the areas that may need clarification and we urge their adoption. The bill defines the income requirement for low and moderate income persons as 80 percent or less of area median income. Under the 1980 Act, the income limit is based on the statutory definition of Section 8 eligibility which was 80 percent of median at the time, but was subsequently reduced to 50 percent. This provision provides a needed clarification to avoid any confusion.

Senator Roth also proposes reducing the 20 year residency requirement for low and moderate income households residing in 20 percent of the units (15 percent in targeted areas). The term is limited to the later of 10 years after over one-half of the projects is first occupied, a date ending when 50 percent of the maturity of the bond has gone by or the date on which any Section 8 (or comparable) assistance terminates.

Mr. Chairman, this provision appears to be a reasonable compromise that is likely to protect the viability of these projects given the absence of a federal rental subsidy.

In addition, it has come to my attention that projects using tax-exempt financing for only the temporary construction period must comply with the 20 year provision. GNMA is refusing to approve these projects that have also received targeted tandem funds since the full 20 year restriction costs GNMA additional points to sell each mortgage. This is because the prepayment assumption is extended from the current 15 years to 20 years. GNMA is awaiting adoption of this provision before approving these projects. In addition, tenant eligi-

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bility must be defined and remain constant for the life of the project, as the income clarification provides, before HUD will consider approving these same projects.

Mr. Chairman, as the Conferees currently meet on H.R.4717, adopotion of the Senate amendments to that bill is still uncertain. Furthermore, we have requested additional conference language, much in line with Senator Roth's provisions regarding arbitrage, first-time homebuyer and purchase price limitations, which you support. Nevertheless, statutory adoption of these provisions will require the Treasury Department to implement the needed changes.

These few modifications included in S.2425, which NAHB wholeheartedly supports, will ensure a workable program that will help provide affordable housing for this nation's low and moderate income households. We urge this Subcommittee to move as rapidly as possible to approve this legislation.

Thank you for the opportunity to present our views on this issue. I would be pleased to answer any questins you may have.

Senator ROTH. Well, thank you gentlemen very much for your testimony today. I am hopeful that the conference will meet today and maybe resolve some of the problems so that we can move very expeditiously. If nothing else, I would like these hearings to help push that conference.

A couple of questions that I would like to ask Mr. Moyer, who, Senator Mitchell, is from my home State of Delaware and heads up the State housing program. Could you comment on what the availability of mortgage revenue bonds has meant to our State in Delaware?

Mr. MOYER. I would be happy to, Senator Roth. The Delaware State Housing Authority has issued three bonds—totaling, $150 million. These issues provided $127 million in mortgage money which has enabled over 3,500 low and moderate income families in Delaware to purchase homes. These issues occurred in 1979, 1980, and 1981.

I would like to point out to you, sir, that 76 percent of those families were first-time homebuyers. The median income was only $19,200 a year. We met our target group. The median home financed with mortgage revenue bonds in Delaware cost $41,500.

Compared with the whole country Delaware is a small State, but the housing finance agency has financed over 85 percent of all the multifamily housing built in the last 3 years. And it has financed about 29 percent of the single family homes. Our homebuilding industry is suffering more from a depression than a recession. I think our last bond issue in June of 1980 saved the homebuilding industry from complete disarray in Delaware and helped the realtors as well.

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Now we are faced with the prospect of having to put up excess reserve money to make a bond issue possible. Delaware is trying. We will try anything three times. And so, under the Mortgage Subsidy Bond Tax Act restrictions we have struggled for many weeks to put together a single family bond issue in Delaware. We are putting up $1 million from our excess reserves in order to make it possible, and basically, sir, that is the reason that more of these bonds are not being issued—because it does require a cash equity contribution up front and not many States are able to do that.

We can only do it this one time.

Senator ROTH. Since we have a vote on, I only have one other question, although I would have been interested in the comments along the same lines of the other gentlemen. But isn't this program about as fast a way as you can have a favorable impact on the housing market? If we can correct the problems here, couldn't we get action faster than in almost any other procedure?

Mr. MOYER. Sir, my theory, after years in this business, I do not know of a faster way. I believe that this is the best and fastest way to turn things around and I am sure that our State is typical of other States.

Senator ROTH. Would the other gentlemen agree with that?

Mr. KOELEMIJ. Yes, Senator, and it has no real direct impact on the budget—maybe positive, but not adversely.

Senator ROTH. Mr. Ams.

Mr. AMS. Changes in the mortgage bond program would have no adverse impact on the budget and, if some of these changes are enacted in the conference bill, the program is already in place to provide needed housing.

Senator ROTH. I agree with you on that. Mr. Knight?

Mr. KNIGHT. I agree.

Senator ROTH. Senator Mitchell.

Senator MITCHELL. In view of the vote, Mr. Chairman, I have no questions. I would just make one comment. Mr. Ams said that he is here representing 640,000 realtors.

Mr. AMS. That is right.

Senator MITCHELL. Every time your association has come here, in the past 2 years, the number is fewer, Mr. Ams, and I think that is a tragic commentary on the state of the housing industry, that many thousands of Americans who have been engaged in the real estate and housing business who are now in other occupations or out of work.

Mr. AMS. Let me comment by saying that last year when we came up to testify on the tax bill we could say that we represented 760,000 Realtors. We have lost 120,000 members.

Senator MITCHELL. I recall that, Mr. Ams, and I have had several meetings with your organization in the meantime and, as I said, I think that is a tragic commentary on the state of our current economy. I join you gentlemen in applauding Senator Roth for moving in this area and, as indicated, I have my own legislation which is comparable and I will join Senator Roth in doing everything we can to move this. It will not solve the problems. It is a significant step in the right direction, though.

Senator ROTH. Thank you, Senator Mitchell, and thank you, gentlemen. The subcommittee is in recess.

[Whereupon, at 12:30 p.m., the subcommittee adjourned.]

[By direction of the chairman, the following communications were made a part of the hearing record:]

**Submitted Statement of the
American Federation of Labor and Congress of Industrial Organizations
to the Subcommittee on Taxation and Debt Management, Senate Finance Committee
on S. 2425, to Modify Requirements Relating to Tax-Exempt Mortgage Subsidy Bonds**

**May 21, 1982**

The AFL-CIO welcomes the opportunity to submit for the record its views on S. 2425, to amend the Internal Revenue Code of 1954 to clarify certain requirements which apply to mortgage subsidy bonds, to make tax-exempt bonds available for certain residential rental property, and for other purposes. We are generally opposed to the bill.

Section 1(a)(1) deals with the effective mortgage rate. It would amend paragraph 2 of Section 103A(i) of the Internal Revenue Code of 1954, to permit a spread of 1¼ percentage points to cover the cost of issuing the bonds. It is claimed by the sponsor of the bill that there is a general concensus that the present 1 percent limitation is too restrictive and that an issuer might have to contribute to costs of issuance forcing bond yields up. The present limitation of 1 percent apparently has generally been adequate; issuing authorities have been able to find issuers who apparently find it worth their while. There is no reason for authorizing higher margins, requiring increased yields which would require high debt service and higher mortgage or rental payments, thereby defeating the purpose of providing housing for moderate-income people. Furthermore, it would ratchet up the already too high, tax-exempt bond rates.

Section 1(b) would raise the home price eligibility from 90 percent of the average area purchase price to 110 percent of the average area purchase price in nontargeted areas, and from 110 to 120 percent in targeted areas. These changes

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would move the statute back toward the abuses of tax-exempt home financing which originally led to the present legislation; namely, permitting high-income home buyers to reap the benefits while purchasing homes of above-average value.

In Section 1(c) on previous ownership interest in a home, certain exceptions would be made against mortgage lending to persons who had an ownership interest in a residence during the past three years. That would be with respect to prior residences which would be certified by a state or local official as not meeting minimum standards established by the state or local government, or owners who had an ownership interest in a prior residence that cannot be occupied on a permanent basis due to a national disaster or governmental action. The latter point, when a residence has been made uninhabitable, is acceptable. However, when it comes to certification by state or local officials that the prior residence did not meet minimum property standards that could have been established by local areas, that should not be made acceptable. It is not appropriate to permit a local area to establish a very high minimum property standard and to allow that to become the grounds for local persons to receive subsidized interest rate mortgage loans to purchase new homes.

Section 1(d) would amend a present requirement that the bond issuer must reduce the amount of reserves held (in the form of nonmortgage assets) as the outstanding mortgage amounts decline. The amendment would waive such requirement if the required sale of the nonmortgage reserve assets would entail a loss in excess of the amount of undistributed arbitrage profits on such nonmortgage investments that could be credited to mortgagors. This is a sensible amendment, with possible benefits to the mortgagors.

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Subsection 1(e) would call for removal of the registration requirement on the grounds that no other tax-exempt bonds face this requirement. That is no reason not to have a registration requirement for this special-purpose type of bond issue. It is important to be able to trace the ownership of the bonds after issue to help detect if there is any collusion between residential developers, local authorities, and subsidized mortgage recipients, any one of whom might be bond buyers.

Section 2 of the bill would make two changes in the present statute with respect to multifamily rental housing that is financed with tax-exempt bonds. Section 1(b) would establish "not in excess of 80 percent of median area income" as the definition of low- or moderate-income families, for whom 15 percent of rental units in a targeted area project and 20 percent of units in a nontargeted area project must be reserved. This definition is reasonable. However, the same section would require that the stipulated percentage of such units be reserved for low- or moderate-income occupancy for the longer of (only) 10 years or one-half of the term of the bond issue. The AFL-CIO strongly objects to the latter provision which would permit tax-exempt financing of rental housing without significant public interest benefit for a number of years. The advantage of the financing, furthermore, could probably bring a windfall gain to the property owner who would more readily be able to sell the property at a higher price, subject to the low-interest rate mortgage, after the special occupancy requirements were no longer in effect.

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**national milk producers federation**

30 F Street, N. W., Washington, D. C. 20001
(202)393-8151

Patrick B. Healy
Secretary

The National Milk Producers Federation is a national farm commodity organization representing virtually all of the dairy farmer cooperatives and their dairy farmer members who serve this nation by producing and marketing milk in every state in the Union.

Since its inception in 1916, the Federation has actively participated in the development of dairy programs which are a part of a total system of agricultural law and policy which can appropriately be termed a national food policy.

The policies of the Federation are determined by its membership on a basis that assures participation from across the nation. The policy positions expressed by NMPF are thus the only nationwide expression of dairy farmers and their cooperatives on national public policy.

Before the

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

of the

COMMITTEE ON FINANCE

UNITED STATES SENATE

With regard to

Bill S.1485 permitting investment tax credits for single purpose agricultural or horticultural structures for taxable years ending after August 15, 1971

Hearing Held May 21, 1982

Patrick B. Healy
Secretary

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The National Milk Producers Federation is a farm commodity organization representing nearly all of the dairy marketing cooperatives serving their dairy farmer members and the nation's consumers. The Federation is the only organization exclusively representing these dairy cooperatives and their dairy farmer members. Because single purpose agricultural structures are often constructed on dairy farms, we are pleased to comment on the current legislation.

We therefore support Bill S.1485 by Senator Roth. We believe it is a reasonable effort to correct a situation which, in our opinion, should never have come about.

Specific instances of the denial of the investment credit on single purpose agriculture structures by the Internal Revenue Service have been called to our attention. One of these farmers, who constructed such a facility in 1973, has provided us with copies of correspondence to his Congressman from the Internal Revenue Service detailing the basis for their ruling. This correspondence has served as a reference point for us in preparing this statement.

From this review we can only conclude that the Internal Revenue Service used the most tenuous of justification for the position which they have taken and that, in effect, this position does not reflect the intent of Congress. To reach this conclusion one need only analyze the legislative history of the Revenue Act of 1978.

Efforts to clarify the eligibility of special use agricultural structures was first included in the Senate bill and is covered in Senate Report No. 95-1263. In their report regarding this part of the bill they state (page 117): "This provision will be effective for taxable years which end on or after August 15, 1971."

Note that there is no reference to "open years" as the Internal Revenue Service later ruled. Rather, this provision is to apply to taxable years. One can only interpret this as meaning <u>all</u> taxable years, particularly in the context of the committee's explanation as to why this was being included in the Revenue Act of 1978. This is detailed on page 116 of their report:

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> "When the investment tax credit was restored in 1971 it was the intention of the committee, as expressed in its report on the Revenue Act of 1971, to make it clear that the credit as restored was to apply to special purpose agricultural structures. Despite this expression of intent, the Internal Revenue Service has denied the credit to special purpose agricultural structures and enclosures used for raising poultry, livestock, horticultural products or for producing eggs. Taxpayers' litigation to establish their right to these credits is both expensive and troublesome, particularly in cases involving small farmers with limited amounts of eligible property. As a result of this continuing controversy, the committee has decided to specifically provide that these agricultural structures are eligible for the investment credit."

The House of Representatives did not have a comparable provision in their bill.

We now turn to the conference report on the Revenue Act of 1978 and quote from that document as presented to the House of Representatives. In explaining the Senate provision it states: "The amendment clarifies how the law was intended to be interpreted when the credit was restored on August 15, 1971, and applies to taxable years ending after that date."

Here again no reference is made to "open years." Although the report devotes considerable detail to clarify the specific types of structures and uses which would qualify for the investment credit, no other mention is made as to eligible years. One can only assume, based on the sentence quoted above, that the conferees intended it to apply to all qualified activity after August 15, 1971.

The Internal Revenue Service, which apparently was not particularly enthusiastic about this application of the investment credit, based its conclusion on an explanation of the act issued by the staff of the Joint Committee on Internal Revenue Taxation issued in 1979. Here, for the first time, the words "for open taxable years" appear.

It is distressing to us that the Internal Revenue Service did not delve more deeply into the reports prepared and published by members of the Congress as to their intent in preference to that of a staff interpretation.

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Based on this background it is our belief that Bill S.1485 does what the Congress originally intended--to make such structures eligible for investment credit from August 15, 1971 on.

More than a decade has passed since the period in question, starting August 15, 1971, began. It is recognized that tax returns for years that far back are not normally open. We therefore believe the approach in S.1485 is a practical one. By allowing an "open season" of one year after enactment it allows aggrieved parties to file claims without needlessly keeping these early years open for an indeterminate length of time.

On this basis we urge passage of this legislation.

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NAHRO
Serving the Nation's Housing and Community Development Needs

June 3, 1982

The Honorable Robert Packwood
Chairman
Senate Finance, Subcommittee on
Taxation and Debt Management
2221 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Packwood:

On behalf of the National Association of Housing and Redevelopment Officials, (NAHRO), I would like to commend your expeditious handling of S2425 by receiving testimony on this piece of technical legislation aimed at the Mortgage Subsidy Bond law. Although NAHRO did not offer oral testimony, we would at this time, like to provide our comments on S2425 for inclusion in the record of the hearing. Our comments are addressed specifically to those items that are contained in S2425 and HR4717 and recognized to be the most important technical changes needed to facilitate issuance of Mortgage Subsidy Bonds.

Arbitrage

As you are well aware, the 1980 Act restricts the arbitrage to 1%, a reduction from 1½%. This restriction has been an extremely difficult burden for issuing agencies, particulary since previously excluded costs such as origination fees and underwriters' discounts now must be included in the 1% spread. The new definition of arbitrage combined with the spread reduction from 1½% to 1% has prevented many local agencies from structuring bond issues that can be financially self-supporting. While there may be some agencies for which the 1% limitation is workable, cash flow does not allow most issuing agencies to have sufficient revenue to operate the program as well as receive a high bond rating. Stories abound of Housing Finance Agencies relying on special appropriations from their state legislature to assist them in structuring bond issues which can receive a favorable rating.

This has been substantiated in a study by the Congressional Budget Office which notes issuers of Mortgage Subsidy Bonds, in 1981, had to make an equity contribution averaging 8.7%. NAHRO supports raising the arbitrage on a sliding scale to a maximum of 1.25% to recognize that the smaller issues the more arbitrage.

Reserves and Definition of Low and Moderate Income

NAHRO supports the language in both S2425 and HR4717 which makes technical corrections to the law. The language change which provides that reserves need not be disposed of at a loss in order to comply with the requirement that reserves be reduced as mortgages are paid and the provision defining low or moderate income persons as those who earn 80 percent or less of area median income, are important changes which will help to fine tune and facilitate the use of tax-exempt bonds.

National Association of Housing and Redevelopment Officials
2600 Virginia Avenue Northwest Suite 404 Washington D.C. 20037 (202) 333-2020

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Multi-Family Housing

There is an area of the law which inhibits the issuance of bonds for multi-family housing. The law currently requires that 20% of all units (15% in targeted areas) in projects financed by tax-exempt bonds be occupied by Section 8 eligible persons for a period of at least 20 years. Since that provision was put into law, there have been changes in Section 8 income definitions and a serious erosion of available Section 8 units, thus rendering this provision ever more difficult.

The language in the Act relies upon a Section 8 program low/moderate income definition of 80% or less of the area median income. However, the Omnibus Budget Reconciliation Act of 1981 provides that no more than 10% of dwelling units which are available for occupancy under the Section 8 or public housing program before October 1, 1981, and which are leased on or after that date may be leased to tenants whose income is between 50 and 80% of the area median and 5% of those units that become available after October 1, 1981, can be leased to individuals with incomes between 50 and 80% of area median. The Conference Report did state that this limitation was not intended to affect the conditions established for project eligibility under Sections 103(b) (4) (A) or 167 (K) of the Internal Revenue Code of 1954. NAHRO supports the language in both S2425 and the Senate version of HR4717 which places income limits for Section 103 (b) (4) purposes at 80% of area median income, thereby carrying out the intent of Congress when it passed the 1980 Act, and eliminating any potential ambiguity created by the Omnibus Budget Reconciliation Act of 1981.

Beyond the definitional problem, there is a financial problem in supporting projects with 15% to 20% low-income units for 20 years. This provision effectively excludes use of the Section 8 moderate rehabilitation program, which has a contract term of 15 years. Project sponsors are going to have serious financial difficulty supporting a large percentage of low cost units and still maintain an overall moderate rental structure. For larger projects, this added cost could be mitigated if the term of the requirement was reduced. Senator Roth's bill addresses this issue by setting the term at the later of 10 years, one-half the terms of the obligation, or the termination date of companion Section 8 assistance. NAHRO supports this amendment and believes that it will help to stimulate critically needed multi-family housing activity.

However, in the case of small projects, particularly small rehabilitation projects, the occupancy requirement is entirely unworkable. Many cities have been atttempting to expand their local rehabilitation programs. Particular attention has been given to supporting small rental properties, since these often comprise the majority of all units in need of rehabilitation. Projects such as these have not been able to utilize the Section 8 Moderate Rehabilitation Program because the administrative and processing burdens cannot be supported by such small projects. Recognizing this, many cities have been operating simple, successful tax-exempt loan programs for small rental properties. The 15% to 20% low-income requirement renders these small projects financially unfeasible. In order to continue these critical revitalization programs, NAHRO urges amending the law to exempt rehabilitation projects under 50 units from the 15-20% low-income requirement.

Registration

With one minor exception, the purchase of no other tax-exempt bonds are required to be registered; the law clearly treats mortgage revenue bonds in a discriminatory fashion. This requirement simply adds further administrative costs and burdens, hampering housing programs designed to reach lower income families. Since registra-

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tion is generally alien to the tax-exempt market, this requirement detracts from the marketability of mortgage revenue bonds vis-a-vis other tax-exempt bonds. NAHRO supports the elimination of the registration requirement as contained in S2425.

First-time Buyer

NAHRO, wholeheartedly, endorses the provision which lowers the requirement from 100% to 80% for first-time homebuyers. On several occasions NAHRO has testified, before the Congress, that this provision should be amended to include residents of substandard housing and those who have been displaced from their residence by natural disaster or governmental action. Also, lowering the requirement allows for greater local flexibility and more timely commitment of bond proceeds.

Sunset Provision

NAHRO supports the provision in S2425 which would extend the termination date of the tax exempt status of Mortgage Revenue Bonds an additional two years to December 31, 1985.

Although not addressed in S2425, I would like to call to your attention other issues which the NAHRO membership has indicated needs to be addressed by the Congress.

Rehabilitation-Technical Amendments

The dollar limits for home improvement loans have been established in the 1980 Act at the level of $15,000 per property. We recommend that the limits instead be tied to the FHA Title I loan limits ($15,000 for one-family and $7,500 per unit for larger properties). This change would facilitate the rehabilitation of two, three and four-unit buildings. It would also tie the limits to a flexible rate, which is adjusted according to prevailing economic conditions, rather than setting a constant dollar amount in the law. Further, it would encourage program rules and requirements modeled after the FHA Title I program--a program with which lenders are familiar--rather than providing justification for a totally new set of definitions and criteria.

Secondly, NAHRO urges that the purchase price limitations for the combined acquisition and rehabilitation of a property be based upon new construction in the area rather than upon the purchase price of unrehabilitated existing properties. Economically, the cost of acquiring and rehabilitating a structure more closely parallels the cost of new construction than the cost of existing housing.

On the issue of refinancing, although the law specifically permits refinancing in the case of qualified rehabilitation of owner-occupied properties, recent IRS rulings limit refinancing for rental properties to no more than 10% of a bond issue. In our experience, refinancing is often necessary to make rental rehabilitiation economically feasible and to keep rents at a moderate level. NAHRO recommends that the Act be modified to clarify that the same rules on refinancing should apply to the rehabilitation of rental properties as apply to owner occupied properties.

Cooperative Housing

As more and more families are being priced out of the individual homeownership market, cooperative arrangements are becoming an ever increasingly viable and popular way to provide housing. Yet the law is not clear as to whether or not cooperative mortgages would qualify under the multi-family provisions of the law. We urge clarifications of the multi-family provisions to explicitly include cooperative mortgages to be treated as equivalent to mortgages on multi-family rental properties.

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Finally, I would like to emphasize that tax-exempt mortgage bonds offer cities an opportunity to design innovative housing programs that meet their individual needs, and to supplement their existing low-moderate income housing and community development efforts. In line with the new era of federal deregulation and increased local autonomy, the ability to use mortgage bonds allows local public agencies to continue assisting those segments of our society that cannot afford housing on a private market. I appreciate the opportunity to offer these comments to the Subcommittee.

Sincerely,

Robert W. Maffin
Executive Director

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# casa

CARE ASSURANCE SYSTEM FOR THE AGING AND HOMEBOUND
201 Sivley Road, N.W. • Huntsville, Alabama 35801 • Telephone (205) 536-2401

June 3, 1982

Ms. Ethel Stehle, Office Manager
Tax Section
Senate Finance Committee
2227 Dirksen Building
Washington, D. C. 20510

SUBJECT: Written Statement In Support of S.2424

Dear Ms. Stehle:

CASA would appreciate the following remarks being included in the written record of the hearings on the above mentioned bill.

CASA is a volunteer program serving homebound and aging persons in five counties of northeast Alabama. CASA volunteers provide gap-filling services that enable persons needing home health and respite care and/or suffering from Alzheimer's disease to remain at home - thereby reducing the need for repeated hospitalization or premature institutionalization.

The family units served by CASA are doing a commendable job of providing for their family members at great expense and personal sacrifice. CASA heartily supports the income tax credit as proposed in Senate S.2424. CASA believes that the provision of this tax credit will be a cost-saving measure for Medicare and Medicaid institution costs in the long run by offering families an added inducement to provide care at home.

We would appreciate being advised of the results of this hearing.

Sincerely,

Patricia P. Hair

Patricia P. Hair
Regional Director

PPH:ml

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Testimony on S. 2424 submitted by Jerome Stone, President
Alzheimer's Disease and Related Disorders Association

Mr. Chairman and members of the Subcommittee -

I am President of the Alzheimer's Disease and Related Disorders Association, a national organization with 52 member chapters throughout the country, operating in conjunction with some 250 family support groups.

First of all, I want to thank you for affording us the opportunity to present our views on S. 2424.

Mr. Chairman, I realize that the Finance Committee faces an enormous task this year, what with the severe economic and budget pressures we are experiencing. I know, too, that the Congress is now struggling to develop budget plans for holding down the size of the federal deficit. This task is made more difficult, I suspect, when one considers the demands placed on the budget by the so-called noncontrollable programs such as Medicare and Medicaid.

This brings me to the subject at hand.

The legislation which Senator Heinz has introduced, and which you have co-sponsored, is in our Association's view not only good social policy -- but good economic policy, as well.

This bill, S. 2424, would provide for tax credits to help

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defray some of the costs families incur while caring for the elderly. More specifically, the tax credits would be available to families caring for a relative who is either (1) over seventy-five or (2) suffering from Alzheimer's disease.

Background

As you know, Mr. Chairman, Alzheimer's disease is responsible for the majority of cases of senile dementia in the U.S. Currently, more than 1.5 million people in this country are striken with the disease, and not all of them are elderly. In fact, more than 60,000 people in their forties and fifties have been diagnosed as having Alzheimer's disease.

Alzheimer's disease is a neurological disorder. Scientists are not certain what causes the disease, but we do have a painfully clear picture of the suffering it brings about -- not only for the patient, but for the family as well. The disease often renders its victims totally incapable of caring for themselves. As a result, families must cope with the emotional strain associated with seeing an otherwise healthy family member suffer through the prolonged stages of the disease. In addition, they must also bear the enormous financial burden of caring for the patient. You see, neither Medicare nor most insurance plans cover the costs of caring for the Alzheimer's victim.

Economic Impact

Because the victim requires around-the-clock care and attention, many families are forced to turn to nursing homes.

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Last year, more than half of the nursing home admissions were persons suffering from Alzheimer's disease. Estimates place the costs for their care as high as $12.5 billion. When one considers the projected growth in the elderly segment of our population, the costs become staggering.

Alzheimer's Disease and Related Disorders Association Recommendation

Mr. Chairman, we support the intent of S. 2424. While it would not solve the problem, the proposed tax credit would offer families much-needed assistance toward caring for the Alzheimer's victim. What is more, by extending coverage to home health services, adult day care, and respite care, we believe that many families would opt for home care rather than placing the patient in a nursing home.

From an overall economic perspective, the tax credit makes good sense. Government studies have shown that home health care is far less costly than institutional care. Given the fact that health care expenditures are expected to exceed $750 billion by 1990, it behooves us to encourage home health care whenever appropriate. It seems to us that this is the kind of far-sighted budget alternative that is needed to help alleviate some of our economic woes.

Exclusion of Spouses

Mr. Chairman, we do, however, have a concern with respect to one provision in S. 2424.

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In defining those eligible for the tax credit, section 44 (H)(c)(1) specifically excludes spouses. Perhaps this is standard bill language, but in our view it seems somewhat inconsistent with the overall intent of S. 2424. The legislation recognizes the fact that Alzheimer's victims may be in their forties, fifties, or sixties. In the majority of cases, therefore, the primary responsibility for care falls to the victim's spouse. (While a spouse may claim medical deductions, a tax credit would be far more preferable.) If a spouse is providing the care it seems only fair that he or she be entitled to the same tax treatment as any other family member in the same position.

Furthermore, this exclusion may invite criticism that the bill encourages abuse. If a spouse is prohibited from claiming the credit, other relatives might be tempted to do so -- whether or not they actually finance the care provided to the victim.

We recommend that the provision which excludes spouses be deleted.

Conclusion

With the one exception outlined above, we support S. 2424 and encourage its passage as soon as possible.

Mr. Chairman, we thank you for the opportunity to address this very important bill, and we stand ready to assist the Subcommittee in any way possible.

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